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ABSTRACT

The report questions whether there is evidence to indicate a significant undercount of the Spanish speaking background population in the United States in the 1970 Census and whether the undercount, if any, was due to the U.S. Census Bureau's methodology, including its collection techniques. The report also notes that these issues are not unique to persons of Spanish speaking background. Data includes: (1) important issues of Census data, such as voting rights, federally assisted programs, and equal employment opportunities; (2) the Bureau's estimates of population undercounts; (3) indications of a Spanish speaking background undercount, also covering the black undercount and independent reports and surveys; (4) the Bureau's methodology and data collection, especially field collection techniques, bilingual or Spanish questionnaires, and methods of identifying persons of Spanish speaking background; and (5) Bureau of Census employment for community education specialists, census enumerators, and general employment. The report found that, while it is clear that in the 1970 Census the Bureau's efforts to enumerate persons of Spanish speaking background were greater than in any previous Census, they were not well thought out and, as a result, were inadequate. There is strong evidence that the Spanish speaking background population was undercounted substantially. The documentation lies especially in the Bureau's undercount of blacks, its methodology for the collection of data, and myriad independent surveys and reports. Eight recommendations and a listing of selected sources end the document. (KM)

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Counting the Forgotten

The 1970 Census Count of Persons of Spanish Speaking Background in the United States

A Report of the U.S. Commission on Civil Rights
April 1974

RC007855

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell*
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

*Mr. Maurice B. Mitchell resigned from the Commission as of March 21, 1974.

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425
APRIL 1974

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended. This report evaluates the adequacy of the efforts of the Bureau of the Census to enumerate the Spanish speaking background population in the United States in the 1970 census. It is based on interviews with officials from the Bureau of the Census and other Federal agencies with statistical responsibilities and with social demographers expert in the field of data collection on persons of Spanish speaking background. A draft of this report was submitted to the Bureau of the Census for review and comment prior to publication.

We found that the Bureau's procedures have been insensitive to the Spanish speaking background population. In the 1970 census, the Bureau did not use a uniform measure to identify all persons of Spanish speaking background in this country, but rather relied upon a variety of indices administered on a sample basis. Further, the Bureau provided inadequate assistance to Spanish speaking households for them to respond accurately to the census questionnaire. Although instruction sheets and sample questionnaires were available in Spanish at data collection centers, sample Spanish questionnaires were not mailed to respondents; Spanish instruction sheets were only mailed to respondents in selected areas. There was an insufficient number of bilingual census takers and the Bureau's community education program was on a scale too small to reach persons of Spanish speaking background. The Bureau's severe underemployment of persons of Spanish speaking background contributed to its inability to enumerate effectively persons of Spanish speaking background.

As a result, persons of Spanish speaking background were probably undercounted by appreciably more than 7.7 percent--the percent of the black population which the Bureau acknowledges was missed in the 1970 census. If the Bureau does not make its programs and procedures for the 1980 census more responsive to the need for accurate and detailed information on the Nation's second largest minority population, this minority group will continue to remain uncounted and forgotten.

We urge your consideration of the facts presented and ask for your leadership in helping to effect the necessary changes to enable persons of Spanish speaking background to participate fully in the census enumeration process.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

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INTRODUCTION

Enumerating the total population of the United States on any one specific date obviously is an enormous undertaking which requires the highest professional skill. The Bureau of the Census of the Department of Commerce, the Federal agency charged with this responsibility, counted 203.2 million Americans[1] on April 1, 1970 (Census Day) with only an estimated 2.5 percent undercount.[2] As far as the total population is concerned, this probably was the most accurate census ever conducted in United States history.

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[1] Of this total, there were 177.7 million whites (87.5 percent), 22.6 million blacks (11.1 percent), and 2.9 million persons of other races (1.4 percent). U.S. Bureau of the Census, Department of Commerce, PC(1)-B1, 1970 Census of Population: General Population Characteristics--United States Summary at 262 (Jan. 1972). There were 9.1 million persons of Spanish origin (4.5 percent) of whom 98 to 98.5 percent were classified as white. U.S. Bureau of the Census, Department of Commerce, PC(2)-1C, 1970 Census of Population: Subject Reports--Persons of Spanish Origin at IX (June 1973).

[2] U.S. Bureau of the Census, Department of Commerce, "Estimates of Coverage of the Population by Sex, Race, and Age in the 1970 Census" (prepared by Jacob S. Siegel, Population Division), paper presented at the annual meeting of the Population Association of America, New Orleans, La., Apr. 26, 1973. The Bureau defines "undercount" as "persons not counted." (U.S. Social and Economic Statistics Administration, Department of Commerce, "Press Briefing on Evaluation of 1970 Decennial Coverage," statement by Robert L. Hagen, Acting Director, Bureau of the Census, Apr. 25, 1973). In this report, the undercount of persons of Spanish speaking background is considered not only to be those persons of Spanish speaking background who were not counted in the 1970 census, but also those who were not identified as being of Spanish speaking background. Whether an individual is not counted or counted but misidentified, the end result is the same: a count of persons of Spanish speaking background which is too low.

The magnitude of the undertaking which is required to enumerate the American population is illustrated by the fact that the Bureau of the Census began field tests for the 1970 census as early as 1961.[3] By Census Day 1970, the Bureau of the Census consisted of over 185,000 employees, of whom more than 176,000 had been hired temporarily as census takers.[4]

The Bureau is to be commended on its overall performance in the 1970 census. The enumeration of over 200 million Americans with an estimated 97.5 percent accuracy rate is an impressive feat. In spite of this accomplishment, however, there were some groups within the population which were counted less accurately than others.

The Bureau of the Census has hypothesized that the groups with the greatest undercounts were racial and ethnic minority groups residing predominantly in major urban centers.[5] For instance, in the 1970 census, blacks were undercounted nationally by 7.7 percent while whites were undercounted nationally by only 1.9 percent.[6] Black males

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3/ Hearings before the Subcomm. on Census and Statistics of the House Comm. on Post Office and Civil Service on the Accuracy of the 1970 Census Enumeration, 91st. Cong., 2d. Sess., at App. A (1970). [Hereinafter cited as Census Hearings.]

4/ U.S. Bureau of the Census, Department of Commerce, PHC (R)-2, 1970 Census of Population and Housing: Data Collection Forms and Procedures at 9 (Apr. 1971).

5/ U.S. Bureau of the Census, *supra* note 2, at 26 and Jacob S. Siegel, "Completeness of Coverage of the Nonwhite Population in the 1960 Census and Current Estimates, and Some Implications," in Social Statistics and the City: Report of a Conference Held in Washington, D.C., June 22-23, 1967, at 26 (1968).

6/ U.S. Bureau of the Census, *supra* note 2, at Table 2.

25 to 29 years old were undercounted by 19 percent.[7] In addition to blacks, groups which also live under conditions which would be likely to produce an undercount[8] include Puerto Ricans, Mexican Americans, other Spanish speaking background groups, Asian Americans, and urban American Indians. This report concerns the undercount of what has been called the "invisible"[9] or "forgotten"[10] minority--persons of Spanish speaking background.

The Bureau of the Census currently produces data on undercounts for black and white racial groups. However, estimates of the undercount for persons of Spanish speaking background and other minority groups are not available from the Bureau of the Census because of the lack of data needed to estimate their rate of underenumeration.[11]

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[7] Id. at Table 5.

[8] See Chapter 4, p. 44 infra, for a discussion of the socioeconomic conditions which would tend to increase the probability of an undercount.

[9] Statement of Dr. Henry M. Ramirez, Chairman, Cabinet Committee on Opportunities for Spanish Speaking People, before Subcomm. of the House Comm. on Government Operations, July 23, 1973.

[10] George I. Sanchez, Forgotten People: A Study of New Mexicans (Albuquerque, N.M., 1940). Julian Samora, La Raza: Forgotten Americans (Notre Dame, Ind., 1966).

[11] The Census Bureau bases undercount estimates on independent sources of information on births, deaths, Medicare enrollment, immigration-emigration, past census data, and complex analyses of age-sex-race distributions. The Bureau states that such data are available only for blacks and whites. U.S. Social and Economic Statistics Administration, Department of Commerce, Press Release, "Census Bureau Report on 1970 Census Coverage," Apr. 25, 1973.

Data on blacks were collected in the first census in 1970 and in every decennial census thereafter,[12] but the Bureau's collection of data on persons of Spanish speaking background has not been consistent. The first such data were collected in 1850 and were limited to immigrants; i.e., persons born in a Spanish speaking country.[13]

In 1910, one of the census questions asked was the principal language spoken in the home when the respondent was a child. Persons responding that Spanish was the "mother tongue" spoken in the home at childhood were counted.[14]

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[12] U.S. Bureau of the Census, Department of Commerce, "Racial Classification in the Census," staff paper by Henry D. Sheldon presented at the 122nd Annual Meeting of the American Statistical Association, in Proceedings of the Social Statistics Section of the American Statistical Association, at 253 (1962).

[13] Leobardo F. Estrada, Jose Hernandez, and David Alvirez, "Using Census Data to Study the Spanish Heritage Population of the United States," paper presented at the Conference on the Demographic Study of the Mexican American Population, May 17-19, 1973, at the University of Texas at Austin, sponsored by the National Institutes of Health, Department of Health, Education, and Welfare (conference proceedings are in press). See note 198 infra for a further discussion of this report. Data were collected on immigrants from Spain, Cuba, the Dominican Republic, the Latin American countries from Mexico to Chile, and persons migrating from Puerto Rico. The 1880 census asked respondents to specify their birthplace and that of their parents. The Bureau of the Census continues to collect data on first and second generation immigrants. Id.

[14] This "mother tongue" question was asked of all respondents from 1910-1930. In the 1940 census, this question was a sample item. In 1970, a Spanish "language" count also was added in which all members of the household were tabulated where the head of the household or the spouse identified Spanish as the language spoken in his or her home in childhood.

In 1930, the Bureau of the Census attempted to identify first and second generation persons of Mexican descent by adopting a racial designation of "Mexican."[15] The respondent had the option of self-identifying his or her race as white, Negro, or Mexican, among other racial identifiers. The "Mexican" race was defined as "all persons born in Mexico or having parents born in Mexico who are not definitely white, Negro, Indian, Chinese or Japanese."[16] This designation, however, was limited to first and second generations. This mixing of race with ethnicity in the 1930 census proved to be confusing, and a great number of respondents who were of Mexican birth or parentage refused to identify themselves as "Mexican" by race.[17] After the 1930 census, the Bureau of the Census dropped the use of "Mexican" as a racial designation because the Government of Mexico protested its use.[18] Since that time, the racial definition for "white" includes "persons of Mexican birth or ancestry who are not

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15/ Sheldon paper, supra note 12.

16/ Estrada report, supra note 13 at 5.

17/ Jose Hernandez, Leobardo Estrada, and David Alvirez, "Census Data and the Problem of Conceptually Defining the Mexican American Population," Social Science Quarterly 672, note 2 (Mar. 1973).

18/ Philip Hauser, "On the Collection of Data Relating to Race, Religion, and National Origin," paper presented at Institute on the Collection and Use of Data Based on Race, Religion and National Origin, Nov. 18, 1959. Part of the objection was to classifying "Mexican" as a minority "race" with Negro, Chinese, Japanese, American Indian, etc. Also, since census racial classifications developed in response to immigration policy, it was feared that data on Mexicans might be used for restricting their entry into the United States.

definitely Indian or other nonwhite race."[19]

In 1950, in order to further identify persons of Spanish speaking background, the Bureau of the Census began collecting data on persons with Spanish surnames. The Bureau enumerated and tabulated all persons with names which matched those on a list of Spanish surnames which it utilized in the five southwestern States of Arizona, California, Colorado, New Mexico, and Texas.[20]

In the 1960 census, the Bureau used three different measures[21] to identify the Spanish speaking background population: (1) birth or parentage, (2) "mother tongue", and (3) surname (for the five southwestern States). In evaluating the results of this census, the Bureau recognized the possibility of a significant undercount of persons of Spanish speaking background, particularly Puerto Ricans, living in socioeconomic deprivation similar to blacks.[22]

The Bureau of the Census planned to use Spanish birth or parentage, mother tongue, and surname for its data collection activities again in the 1970 census. Then, the Inter-Agency Committee on Mexican American

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19/ U.S. Bureau of the Census, supra note 1, at App. 8.

20/ See note 180 infra.

21/ These measures are correlated only roughly. For example, many, but not all, persons who are of Spanish birth or parentage also are persons whose mother tongue is Spanish.

22/ Siegel report on 1960 census, supra note 5.

Affairs (now the Cabinet Committee on Opportunities for Spanish Speaking People) requested of the Secretary of Commerce that the Bureau take additional steps to enumerate the Spanish speaking background population. The Inter-Agency Committee proposed that a self-identification question on "Spanish origin" be included in the 1970 census.[23/] The Bureau of the Census already had printed three questionnaires to be sent to 80 percent, 15 percent, and 5 percent of the country.[24/] The cost of destroying either the 80 percent or the 15 percent questionnaires and producing another questionnaire with the "Spanish origin" question was said to be prohibitive. The Bureau, thus, decided to abandon its 5 percent sample questionnaire and produce another with the "Spanish origin" question included,[25/] to supplement data from the 15 percent questionnaire on birth or parentage, mother tongue, and surname.[26/] The result was that the 80, 15, and 5 percent questionnaires all contained

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23/ This question asked the respondent to identify his or her origin as being Mexican, Puerto Rican, Cuban, Central or South American, other Spanish, or none of the above.

24/ Every household known to the Bureau of the Census was sent one of the three questionnaires. Some of the questions, such as that on race, were included in all three forms. The three forms and their distribution are discussed further in Chapter 5, p. 67 *infra*.

25/ Telephone interview with Martin Castillo, former Chairman of the Inter-Agency Committee on Mexican American Affairs, Dec. 28, 1973.

26/ The 5 percent sample questionnaire was also used in determining the Spanish surname count in the Southwest.

a question asking respondents to identify themselves, and members of their household from a list of racial/ethnic groups.[27] Mexican Americans, Puerto Ricans, and other Spanish origin groups were not on that list.

The Bureau's techniques for measuring the number of persons of Spanish speaking background in 1970 were a compromise and not a result of its customary, careful scientific planning. It is no wonder that the 1970 census, more than any previous census, was criticized for its measure of this group. Yet, for almost three years there was indication that the Bureau intended to repeat in 1980 substantially the same methodology that evolved in 1970.[28] There is, however, time for the Bureau to make changes in its plans for the 1980 census. By August 1973, the Bureau had finished publishing the data obtained from the 1970 census, and it does not expect to begin planning actively for

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27/ The list included blacks, American Indians, Chinese, Japanese, Filipinos, Hawaiians, Koreans, and whites. See Chapter 5, p. 84, infra.

28/ In March 1973, Commission staff met with Bureau officials to discuss the count of persons of Spanish speaking background. Interview with Daniel B. Levine, Associate Director for Demographic Operations; Joseph Waksburg, Associate Director for Statistical Standards and Methodology; and Meyer Zitter, Chief of the Population Division, U.S. Bureau of the Census, Department of Commerce, Mar. 14, 1973. At the time of that interview, the Bureau had no plans to include a Spanish origin question in 100 percent of the 1980 census questionnaires or to use bilingual questionnaires for that census. As of March 15, 1974, the Bureau had not informed the Commission that such plans had been formulated.

the 1980 census until 1976 or 1977.[29]

Because of the numerous allegations made by Mexican American and Puerto Rican organizations that persons of Spanish speaking background were undercounted substantially in the 1970 census, Commission staff conducted an analysis of census data and procedures in December 1972 and noted certain deficiencies which were brought to the attention of the Bureau.[30] The Bureau responded to our analysis in January 1973;[31] and based on its response, Commission staff met with Bureau officials[32] to discuss further these allegations of an undercount. This report was produced as a result of this correspondence and discussions with the Bureau and extensive independent research. Before publication, this report was submitted to the Bureau for comments. The Commission

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29/ Id. and interview with Morris Gorinson, Assistant Chief, Demographic Census Staff, U.S. Bureau of the Census, Department of Commerce, Aug. 20, 1973.

The Bureau states that it began planning for the 1980 census as of 1973. Attachment to letter from Vincent P. Barabba, Director, U.S. Bureau of the Census, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Mar. 15, 1974. [Hereinafter cited as Bureau of the Census response.]

Indeed, the Fiscal Year 1974 Budget calls for preliminary planning for the 1980 census, such as developing the scope of activities to be undertaken prior to that census and initiating questionnaire design. Nonetheless, the Bureau has not yet reached the point in its preparation for the 1980 census when it makes the plans for how the census will be conducted. Further, it has not even reached the stage of gathering the information necessary to make those plans.

30/ Letter from John A. Buggs, Staff Director, U.S. Commission on Civil Rights to George Hay Brown, Director, U.S. Bureau of the Census, Department of Commerce, Dec. 14, 1972.

31/ Letter from George H. Brown, Director, U.S. Bureau of the Census, Department of Commerce, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Jan. 10, 1973.

32/ Levine interview, *supra* note 28.

received written comments from the Bureau and met with Bureau staff concerning this report.[33]

This report concerns the questions of whether there is evidence to indicate a significant undercount of the Spanish speaking background population in the United States in the 1970 census and whether the undercount, if any, was due to the Bureau's methodology, including its collection techniques. The issues raised in this report and its findings and recommendations, however, are not unique to persons of Spanish speaking background. They often are applicable, as well, to blacks, American Indians, Asian Americans, and other racial and ethnic minority groups.[34]

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[33] Bureau of the Census response, supra note 29. Interview with Vincent P. Barabba, Director; Robert L. Hagen, Deputy Director; Daniel B. Levine, Associate Director for Demographic Operations; David L. Kaplan, Chief, Demographic Census Staff; and Meyer Zitter, Chief, Population Division, U.S. Bureau of the Census, Department of Commerce, Mar. 15, 1974. Commission staff reviewed the Bureau's comments and in a number of instances have reflected the Bureau's views in footnotes.

[34] Inadequacies in census data also have been alleged by blacks, American Indians, and Asian Americans. See testimony of Whitney M. Young, former executive director of the Urban League, in Census Hearings, supra note 3; Joint Center for Policy Studies, The Black Community and Revenue Sharing (1973); letter from J. H. Strauss, American Indian Studies Faculty, University of Arizona, to Cynthia N. Graae, Associate Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Oct. 11, 1973; Japanese American Citizen's League, "A Brief For a Cabinet Committee on Asian American Affairs," Nov. 15, 1971; interview with David Ushio, former assistant Washington representative, Japanese American Citizen's League, May 4, 1972; and telephone interviews with Alexander McNabb, Director of Engineering and Construction, Bureau of Indian Affairs, Department of the Interior, Mar. 16, 1972, and Jack D. Forbes, professor of Native American Studies, University of California at Davis, Jan. 11, 1972. This report is limited to the undercount of persons of Spanish speaking background because other racial/ethnic groups--blacks, Asian Americans, and American Indians--were included for self-identification in the questionnaires sent to all households, but persons of Spanish speaking background could only identify themselves as such on those questionnaires sent to 15 and 5 percent of the households. Thus, in this critical sense, the undercount problem of persons of Spanish speaking background is distinct from those of other racial/ethnic groups.

Our underlying conclusion is that persons of Spanish speaking background and all minorities[35] are entitled to the same consideration given to nonminorities in the Bureau's methodology and data collection techniques.[36]

35/ Data collection by sex is not covered in this report. All respondents are asked to indicate their sex and that of each member of their household. The census, however, does have sex-related deficiencies. According to the Bureau's estimates, the rate of undercount for males (3.3 percent) was nearly twice that for females (1.8 percent). Collection and tabulation of data on women also is deficient. This is largely because much of census data is compiled only for heads of households, who, by the Bureau's definition, generally are male. Only where adult males are not found in a household are women considered as heads of household. Very often data are not tabulated separately for female-headed households. Thus, for example, the Bureau does not publish data on the facilities in housing units occupied by female-headed families; e.g., whether the unit contains plumbing, is rented or owner occupied, and, if owned, its value.

36/ The Bureau stated that:

> The decennial census collects data on all persons residing in the United States. There is absolutely no racial or ethnic bias in our statistical work. Whenever the Census Bureau reports data for the white population in the United States, and 98 percent of the population of Spanish origin are classified as white, corresponding data are presented for Negroes. Bureau of the Census response at 2, *supra* note 29.

The Bureau of the Census had admitted that there were a number of persons not counted in the 1970 census. The Commission maintains that persons of Spanish speaking background were in all probability disproportionately represented among those not counted. In order to increase the coverage of persons of Spanish speaking background and other minorities, the Bureau's data collection techniques must be made sensitive to these groups. The fact that the Bureau's publication of data on whites is inclusive of persons of Spanish speaking background in no way decreases the need for special data on persons of Spanish speaking background.

Chapter 2

IMPORTANT USES OF CENSUS DATA

The nature of the data collected by the Bureau of the Census is dependent upon the Bureau's perception of the needs of data users. The fact that the Bureau's collection of Spanish origin data occurred only as an afterthought to the overall design of the 1970 census[37] illustrates its failure to be aware of the myriad important uses of such data.

Upon assuming his responsibilities as the Director of the Census in 1973, Vincent P. Barabba[38] asserted that the services the Bureau provides to its users will be of paramount importance during his stewardship.[39] Its major service, of course, is the production of accurate data which are relevant to the purposes of the users.[40] This includes data on persons of Spanish speaking background.

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[37] The Bureau stated that: "We readily responded to the request of the Inter-Agency Committee on Mexican American Affairs to include a question on Spanish origin in the census." Bureau of the Census response, _supra_ note 29, at 3. That the inclusion of a Spanish origin question was made in response to the Inter-Agency Committee's request emphasizes the fact that this question was included after the Bureau had completed its own planning for the 1970 census.

[38] Prior to becoming Director of the Census, Mr. Barabba was president of Datamatics, Inc. and chairman of the board of Decision Making Informati Inc.

[39] Statement by Vincent P. Barabba, Director of the Census, before the Census Advisory Committee of the American Statistical Association, Sept. 1 1973.

[40] Users include the Congress, Federal agencies, State and local governme educational institutions, industry, private organizations and individuals.

Federal agencies communicate their data needs to the Bureau in memoranda and meetings.[41] If preparations for the 1980 census are similar to those for the 1970 census, a Federal task force will be convened by the Office of Management and Budget (OMB) within the next year to provide input. Members of the task force will be asked to submit a list of their agency's data needs for the 1980 census. There is, however, a wide scope for Bureau influence in determining the agenda for task force meetings. The Bureau also can ask OMB to make certain that all relevant Federal interests are represented. In preparation for the 1970 census, the Bureau did not use this task force to ensure that it acquired information on needs for data on persons of Spanish speaking background.[42]

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[41] The collection of some data is determined by statute. Since 1930, Congress has required that the decennial census be used to collect general purpose statistics on population, employment, and housing characteristics. 13 U.S.C. §141(a) (1970).

In addition, for the 1970 census, the Bureau drew upon a variety of advisory committees;[43] but it kept no records concerning the number of persons of Spanish speaking background who participated. The Bureau made no efforts to ensure that advisory committees had members of Spanish speaking background. Further, no committees were formed to advise the Bureau concerning a count of the Spanish speaking background population.[44]

Where users ask the Bureau to collect specific data, it still has great latitude because it can decide not to collect the requested data on the grounds of technical obstacles. Unless Bureau staff is familiarized fully with the need for data on persons of Spanish speaking background, such obstacles might well provide an excuse for failure to increase the amount and accuracy of census data on persons of Spanish speaking background. In fact, Bureau officials believe that the Bureau cannot make a commitment to collect improved Spanish speaking background data on all questionnaires in the 1980 census. They expect that, while there is current interest in such data, it may be transitional and that the questions asked in 1980 will depend upon what is in the public eye at that time.[45]

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[42] The Bureau states that: "Both the Bureau and OMB for both the 1960 and 1970 censuses invited all relevant (in the broadest sense) agencies to participate when the Council was established and as it operated over time. For example, at the first meeting of the 1970 Council in August 1965, among the agencies represented were the Office of Economic Opportunity, Equal Employment Opportunity Commission, and the U.S. Commission on Civil Rights." Bureau of the Census response, supra note 29 at 4.

[43] Levine interview, supra note 28. The Bureau has a number of permanent professional advisory committees, such as the Census Advisory Committee of the American Statistical Association, the Census Advisory Committee of the American Economic Association, and the Census Advisory Committee on Population Statistics. In conjunction with the 1970 census, the Bureau also had local advisory committees throughout the country.

[44] Id. Since the 1970 census, three committees--one on Native Americans, one on blacks, and one on persons of Spanish origin--have been formed to provide guidance in the publication of 1970 census statistics and related matters. No similar advisory committees were formed to assist the Bureau in collection of data on minority group persons in the 1970 census. The members of the committee on persons of Spanish origin were two Mexican Americans and a Puerto Rican. They were Drs. David Alvirez, Department of Behavioral Sciences, Pan American University; Leobardo Estrada, Department of Sociology, North Texas State University; and Jose Hernandez, Department of Sociology, University of Arizona, respectively.

Data on Mexican Americans, Puerto Ricans, and other persons of Spanish speaking background currently are in demand by a large number of governmental and private agencies and institutions. Much of the need for these data relates to combating and preventing ethnic origin discrimination. It is unrealistic to expect that the need will be eliminated or even reduced significantly by 1980.

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[45] Levine interview, supra note 28. Bureau officials stated that the Bureau cannot be concerned with collecting data which only is of temporary interest to its users. Id.

The Bureau states that:

> The demands for data are great and the census must serve a multitude of purposes in providing the Nation's benchmark data on the population and their demographic, family, education, occupational, income, and other characteristics ....These are changing needs and necessarily preclude making final commitment of the 1980 census content this far in advance. What the future holds in terms of data needs is still to be determined....The 1980 census will include questions to identify persons of Spanish background. The format is still to be determined. Bureau of the Census response, supra note 29, at 4.

VOTING RIGHTS

The Constitution of the United States requires that a census be conducted decennially for the apportionment of the U.S. House of Representatives.[46] The collection of population data used to allocate the 435 congressional seats to the States[47] continues to be one of the Bureau's most important functions.

Within States, there can be no significant disparity in the size of congressional districts.[48] Any undercount of persons of Spanish speaking background or other minorities thus will mean that States and cities with large minority populations may not be accorded the full representation to which they are entitled.[49]

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[46] U.S. Const. art. I, §2.

[47] The fourteenth amendment has been construed to require that representatives be apportioned to the States based on State population.

[48] The Supreme Court held in Baker v. Carr, 369 U.S. 186 (1962), that Federal courts have jurisdiction over fourteenth amendment challenges to State reapportionment plans. In Wesberry v. Sanders, 376 U.S. 1 (1964), the Court invalidated a Georgia redistricting statute as abridging the requirement of Article I, Section 2, of the Federal Constitution, which requires that, as nearly as practicable, one person's vote in a congressional election must be worth as much as another's. Following Wesberry v. Sanders, the Supreme Court in Kirkpatrick v. Preisler, 394 U.S. 526 (1969), declared invalid a 1967 Missouri reapportionment statute which created districts at variance with the ideal size, based on census data, by as little as 2.84 percent. The Court held that limited population variances among congressional districts were permissible constitutionally only if they were unavoidable despite a good-faith effort to achieve absolute equality or if justification for them was shown. The Court upheld the district court's finding that the population variances were avoidable, that the State had not satisfactorily justified such variances, and that the State had not relied on the best available population statistics; i.e., 1960 census data.

[49] See note 72 *infra*.

The Bureau of the Census has recognized that an accurate count of minority groups would increase their political power.[50] Puerto Ricans and Mexican Americans have alleged that an undercount by the Bureau of the Census cuts into their access to the political processes.[51] In a lawsuit against the Bureau, attorneys for a group of Mexican American and other Spanish speaking background plaintiffs argued that a significant undercount of the Mexican American population deprived them of considerable political influence.[52]

Another important element in the political implications of an undercount of persons of Spanish speaking background is the ability to exercise the vote. This Commission's first congressional mandate was to investigate allegations of discrimination based on race, color, religion, or national origin in the denial of voting rights.[53] In order to carry out this responsibility fully, a provision of the Civil Rights Act of 1964 required that the Bureau of the Census collect data based on race, color, and national origin for persons of voting age in the 1970 census.[54] The purpose of this provision was for this Commission to use the data collected in the 1970 census to determine whether minorities were being denied constitutionally-protected voting rights.[55]

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[50] "We point out that political power of minority groups would increase if they were fully counted." Conrad Tauber, former Associate Director for Demographic Fields, U.S. Bureau of the Census, U.S. News and World Report, Jan. 12, 1970, at 37-38.

[51] The undercount allegations of the New York City Puerto Ricans are chronicled in N.Y. Times articles by Edward C. Burks: "Blacks and Puerto Ricans Up Million Here in Decade," Mar. 6, 1972; "Puerto Ricans Say Census Cuts Political Power Here," Oct. 2, 1972; and "Middle-Class Whites Still Leaving City," May 29, 1973.

[52] Confederacion de la Raza Unida v. Brown, 345 F. Supp. 909 (N.D. Cal. 1972). Plaintiffs also alleged denial of an appropriate share of Federal funds and jobs. The court denied plaintiffs' request for a preliminary injunction to require the Bureau to insert a special statement in the census reports indicating the possibility of an undercount of persons of Spanish speaking background. It found that the Bureau's procedures were not arbitrary or capricious but reasonably adapted to the purposes of conducting a decennial census. The court did not rule on whether an undercount was likely to have occurred. The suit was finally dismissed without prejudice. Telephone interview with Robert Gnaizda, attorney, Public Advocates, Inc., San Francisco, Calif., May 4, 1973.

Census data on persons of voting age by race have been used in lawsuits alleging violations of voting rights because of discrimination.[56] Similar data for the protection of the voting rights of persons of Spanish speaking background were not available until 1972.[57]

53/ Section 104(a)(1) of the Civil Rights Act of 1957, 42 U.S.C. §1975 c(a)(1) (1970).

54/ Title VIII of the Civil Rights Act of 1964, 42 U.S.C. §2000f (1970).

55/ Meetings were held between staff from the Bureau and this Commission to ensure that the appropriate data be collected. The Bureau raised significant technical difficulties in the collection of such data. Neither the Bureau nor the Commission followed up this mandate because Congress did not provide the necessary funding. Telephone interviews with William Taylor, former Staff Director, and Eunice Grier, former Director of Research, U. S. Commission on Civil Rights, Dec. 14, 1973.

56/ For example, as the U.S. Fifth Circuit Court of Appeals noted "[I]n the problem of racial discrimination, statistics often tell much, and courts listen. Here they are spectacular. With approximately 17% of the Macon County population being white, the balance, 83%, being Negro, less than 10% of the Negroes of voting age are registered while nearly 100% of the white citizens are." Alabama v. United States, 304 F.2d 583, 586 (5th Cir. 1962).

57/ Voting age data (persons 18 years of age and over) were first published in November 1964 for white, nonwhite, and Negro. Similar data were published for November 1966, 1968, and 1970. Spanish origin voting age data were first published in November 1972. U.S. Bureau of the Census, Department of Commerce, Series P-20, No. 253, Current Population Reports: Voting and Registration in the Election of November 1972 (Oct. 1973), and No. 244, Current Population Reports: Voter Participation in November 1972 (Advance Statistics) (Dec. 1972).

Voting age data on persons of Spanish speaking background are necessary to measure whether, because of a language barrier, persons of Spanish speaking background effectively have been denied their franchise. That such a denial had occurred was exactly the argument presented to the United States District Court in Puerto Rican Organization for Political Action v. Kusper.[58] Plaintiffs argued that the Voting Rights Act of 1965[59] imposed upon the States the obligation of providing voting assistance in Spanish so that persons of Puerto Rican birth could cast an effective ballot. The court agreed with the plaintiffs and issued an injunction requiring the defendant Board of Election Commissioners of the City of Chicago to provide assistance in Spanish, such as directions for voting on voting machines, posters advising who is entitled to assistance, instruction cards, and bilingual (Spanish-English) election judges.[60] This decision was upheld by the 7th Circuit Court of Appeals, which agreed with the District Court that the right to vote encompasses the right to an effective vote.[61] The City of Chicago has not challenged the Court of Appeals decision and has decided to implement this decision by providing bilingual assistance in those wards where the 1970 census showed that .5 percent or more of the population was of Spanish speaking background.[62]

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[58] 350 F. Supp. 606 (N.D. Ill. 1972), aff'd., No. 73-1035, summarized in 42 U.S.L.W. 2333 (7th Cir. Dec. 18, 1973).

[59] Section 4(e) of the Act, 42 U.S.C. §1973b(e) (1970), prohibits States and local governments from conditioning the right to vote of Puerto Rican citizens educated in the Puerto Rican school system on their ability to read, write, understand, or interpret any matter in English. The constitutionality of this provision was upheld by the Supreme Court in Katzenbach v. Morgan, 384 U.S. 641 (1966).

[60] 350 F. Supp. at 611-12.

This issue was confronted again recently in Torres v. Sachs.[63] A Federal district court required the City of New York to provide bilingual (Spanish-English) personnel and bilingual ballots "at all polling places situated, in whole or part, in an election district which falls within any 1970 'Census Tract' containing 5 percent or more Puerto Rican or other Hispanic persons."[64] Thus, the Torres decision set a standard for determining those election districts where bilingual assistance would be required. Other Federal courts have reached similar conclusions, and the City of Miami has determined that the standard set by the court in the Torres decision in New York was applicable to the City of Miami for its November 1973 general election.[65]

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[61] "We agree with the interpretation of the cases above that 'the right to vote' encompasses the right to an effective vote. If a person who cannot read English is entitled to oral assistance, if a Negro is entitled to correction of erroneous instructions, so a Spanish speaking Puerto Rican is entitled to assistance in the language he can read or understand." 42 U.S.L.W. at 2333, supra note 58. This decision is now binding on all lower Federal courts in the 7th Circuit.

[62] Preliminary Agreement and Order at 3, Puerto Rican Organization for Political Action v. Chicago Board of Election Commissioners, No. 72 C 2312 (N.D. Ill. Jan. 28, 1974).

[63] 73 Civ. 3921 (CES) (S.D. N.Y. Sept. 26, 1973). The plaintiffs here argued that the failure of the Board of Elections for the City of New York to: (1) provide translators to assist Spanish speaking voters in answering questions about the vote; (2) provide propositions, amendments, and voting instrutions printed in Spanish; and (3) prepare and distribute ballots and other election materials in Spanish, violated the Voting Rights Act of 1965 as amended and caused the plaintiffs and the class they represented irreparable harm by effectively denying them the right to cast an intelligent ballot.

[64] Id. Preliminary Injunction at 2.

It would appear that the voting assistance provisions of the Torres decision are warranted in other areas in the United States, especially in States such as California and Texas, which have significant Spanish speaking populations.[66] It is clear that, without bilingual ballots and assistance at the polls, Spanish speaking persons will continue to be effectively disenfranchised.[67] If the requirement for bilingual ballots and assistance at the polls were applied nationwide in districts in which 5 percent or more of the population are of Spanish speaking background, it would, for example, have an effect in a minimum of 22 percent of the U.S. congressional districts, including all 43 congressional districts in California; 21 of the 24 congressional districts in Texas; all the congressional districts in Arizona, Colorado, and New Mexico; the 3 congressional districts in Miami, Florida; and 11 of the 17 congressional districts in New York City.[68]

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[65] U.S. district courts in New Jersey in Marquez v. Falcey, Civ. No. 1447-73 (D.N.J. Oct. 9, 1973) and Pennsylvania in Arroyo v. Tucker, Civ. No. 73-2247JL (E.D. Pa. Oct. 5, 1973) have followed the Torres decision requiring bilingual assistance in election districts with 5 percent or more Spanish speaking population. The Miami decision was reiterated in a letter from John S. Lloyd, assistant director, Law Department, City of Miami, Fla., to Jaime Taronji, Jr., equal opportunity specialist, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, enclosing a copy of the Sept. 29, 1973, memorandum from the city attorney, Alan H. Rothstein, to the city clerk, H. D. Southern, Nov. 12, 1973.

[66] Cf. Lau v. Nichols, 94 S. Ct. 786 (1974). See note 75 infra. Extending the rationale in Lau to voting rights, it can be argued that States and local governments have an affirmative duty to provide adequate assistance at the polls to non-English-speaking citizens where they are in large concentrations so that they can cast an effective ballot.

[67] This Commission has asked the Department of Justice to adopt the position that the provision of bilingual election assistance is required to assure full minority political participation and to undertake a litigation strategy to achieve this end. Letter from John A. Buggs, Staff Director, U.S. Commission on Civil Rights, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, Mar. 29, 1974.

In implementing such a provision, the significance of accurate census data is apparent, especially in the case of those census tracts where the 1970 census data shows that 4 percent of the population was of Spanish speaking background. For example, a 25 percent undercount in such census tracts could make the difference between falling within the provisions of the court decision or being excluded.[69]

FEDERALLY-ASSISTED PROGRAMS

Federal aid to State and local governments, principally assistance for social programs, often is allocated to those governments on the basis of demonstrated need. The size of the population to be served and its social and economic characteristics, as recorded in the census, are the primary factors to be taken into account in determining need.[70] For instance, in the allocation of general revenue sharing funds, Federal assistance payments are based on a formula using, among other factors, the 1970 census population totals.[71]

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[68] U.S. Bureau of the Census, Department of Commerce, Congressional District Data Book, 93d Congress (A Statistical Abstract Supplement, 1973).

[69] It is beyond the scope of this report to estimate the size of the 1970 census undercount of persons of Spanish speaking background. The 25 percent undercount referred to here is used only for illustration. It is not meant as a definitive statement that persons of Spanish speaking background were undercounted by 25 percent. However, the estimate of the Cabinet Committee on Opportunities for Spanish Speaking People that there were 12 million persons of Spanish speaking background, compared to the Bureau's estimate of 9 million, would signify over a 30 percent undercount. See p. 48 *infra*.

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[70] Some of the Federal assistance programs which are required by law to use census data in calculating allocations to State and local governments are: The Adult Education Act of 1966 as amended, 20 U.S.C. §1201 et seq. (1970); The Elementary and Secondary Education Act of 1965 as amended, 20 U.S.C. §236 et seq. (1970); The Economic Opportunity Act of 1964 as amended, 42 U.S.C. §2701 et seq. (1970); The Appalachian Regional Development Act of 1962 as amended, 40 U.S.C. App. §1 et seq. (1970); The Manpower Development and Training Act of 1962 as amended, 42 U.S.C. §2571 et seq. (1970); The National School Lunch Act as amended, 42 U.S.C. §1751 et seq. (1970); The Public Health Service Act as amended, 42 U.S.C. §201 et seq. (1970); The Vocational Education Act of 1963 as amended, 20 U.S.C. §1241 et seq. (1970); and The State and Local Fiscal Assistance Act of 1972 (general revenue sharing), 31 U.S.C. §1221 et seq. (Supp. II, 1972). A number of Federal statutes also require the use of census data on population and housing in their administration. These include: The Fair Labor Standards Act of 1938 as amended, 29 U.S.C. §201 et seq. (1970); The Federal-Aid Highway Act as amended, 23 U.S.C. §101 et seq. (1970); The National Housing Acts (subsidized home ownership and rent programs, low rent public housing program), 12 U.S.C. § 1701 et seq. (1970); The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §3311 et seq. (1970); The Military Construction Authorization Acts, 10 U.S.C. §2674 et seq. (1970); and Executive Orders 10997 to 11005, assigning emergency preparedness functions to various departments and agencies.

The Bureau of the Census acknowledges the probability that an undercount could affect adversely the allocation of Federal funds to State and local governments, especially to major urban centers with high concentrations of blacks.[72] Similarly, a significant undercount of the Spanish speaking background population would mean a significant decrease in the amount of the Federal assistance many communities would receive if accurate data were available.[73]

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[71] Section 109(a)(7)(A) of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. §1228(a)(7)(A) (1970), provides as a general rule that, "[t]he data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be." The most "recently available data" are generally the population totals obtained from the 1970 census.

[72] The Bureau has stated that: "The impact of any underenumeration on such uses as apportionment or allocation of funds among States or other local areas depends principally on the variation in the rate of underenumeration from area to area. If the rate of underenumeration is the same from area to area, then the results would be unaffected by an undercoverage. It is improbable that such uniformity exists, however. The possible distortion is greater for smaller geographic units and especially those in which Negroes are concentrated. It seems likely that, since undercoverage rates of Negroes are higher than those of whites, the areas of large cities having heavy concentrations of Negroes have higher undercoverage rates than areas with a more balanced racial distribution." U.S. Bureau of the Census, supra note 2.

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[73] The Bureau of the Census reports that the higher undercount rate for blacks vis-a-vis whites may result in a higher than average undercount for cities with large black populations, such as Washington, D.C. Id. The same rationale would apply equally to cities such as San Antonio, Tex.; Los Angeles, Calif.; and New York, N.Y., with large Spanish speaking background populations. The undercount of the total population in cities such as New York with substantial numbers of blacks and Puerto Ricans or Los Angeles with large numbers of blacks and Mexican Americans would be particularly acute. The Bureau states that:

> ...Since the higher undercount rates for blacks than whites may result in a higher undercount for cities with large black populations, therefore, the same rationale would equally apply to cities with large Spanish speaking population is fallacious reasoning. Bureau of the Census response, supra note 29, at 5.

However, concerning the 1960 census, the Bureau stated that:

> There is a basis for suggesting that Negroes are counted most poorly in the very large cities in the fact that in 1960 enumeration in urban slums was more difficult and took longer than in other urban segments and in rural areas....A highly conjectural inference may be made that the enumeration of Puerto Ricans and other population groups concentrated in the deteriorated sections of our large cities was also rather defective....It is quite probable, however, that serious distortion does occur in the figures for many smaller geographic units within the country, particularly units in cities (such as census tracts, congressional districts, and enumeration districts) where Negroes, Puerto Ricans, and other relatively poor minority groups are concentrated. U.S. Bureau of the Census at 6 and 24, supra note 5.

Many federally-assisted programs are designed specifically to aid low-income persons--persons who are living under poverty conditions because of such factors as educational deprivation or lack of marketable job skills. State and local governments charged with distributing Federal assistance thus need social and demographic data to identify the needs of their disadvantaged communities and to evaluate the effectiveness of existing Federal programs. When State and local governments seek Federal funding for social welfare programs, census data could be used in a great many cases to substantiate the needs of the particular disadvantaged group for which the assistance is sought.

Federal officials also need racial and ethnic data on the intended beneficiaries of their programs.[74/] Title VI of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race or national origin in programs or activities receiving Federal financial assistance. In many instances, however, there is evidence that Federal assistance is

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[74/] See Subcommittee on Racial Data Collection to the Interagency Committee on Uniform Civil Rights Policies and Practices, The Racial Data Policies and Capabilities of the Federal Government (1971); Interagency Racial Data Committee, Establishing a Federal Racial/Ethnic Data System (1972); and U.S. Commission on Civil Rights, To Know or Not to Know: Collection and Use of Racial and Ethnic Data (1973).

dispensed on a discriminatory basis.[75] Federal agencies thus, have attempted to examine the ethnic origin, race, and sex[76] of the beneficiaries to ensure that their programs are nondiscriminatory.[77]

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[75] The Supreme Court recently has decided that inadequate English language instruction in school districts with large non-English-speaking student populations--which, thus, denies such students meaningful participation in the public educational program--violates Title VI of the Civil Rights Act of 1964. Lau v. Nichols, supra note 66. Investigations by this Commission show that in many cities in the Northeast, Puerto Rican children are not receiving adequate English or bilingual instruction. Further, only a small proportion of public housing units are occupied by Puerto Ricans although housing for most Puerto Ricans may be substandard and expensive. Hospitals provide inadequate services for communication with persons who speak only Spanish. Antipoverty programs seldom are directed toward Puerto Ricans. Connecticut State Advisory Committee to U.S. Commission on Civil Rights, El Boricua: The Puerto Rican Community in Bridgeport and New Haven (Jan. 1973); Massachusetts State Advisory Committee to U.S. Commission on Civil Rights, Issues of Concern to Puerto Ricans in Boston and Springfield (Feb. 1972); Hearing before the U.S. Commission on Civil Rights held in New York, N.Y., Feb. 14-15, 1972; and Pennsylvania State Advisory Committee to U.S. Commission on Civil Rights, In Search of a Better Life: The Education and Housing Problems of Puerto Ricans in Philadelphia (Jan. 1974). Similarly, in the southwestern United States, public schools make inadequate provision for teaching Mexican American children. U.S. Commission on Civil Rights, Mexican American Education Study, Report III, The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest (1972). Law enforcement agencies in the Southwest are poorly equipped to communicate with Mexican Americans, and this often results in the denial of equal protection of the law. U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (1970). Mexican Americans often face poor housing and health care but are infrequently employed in agencies designated to cope with these problems, Hearing before the U.S. Commission on Civil Rights held in San Antonio, Texas, Dec. 9-14, 1968.

[76] Minority group women often face special problems of discrimination and the incidence of poverty among households headed by minority women is high. As with all other racial and ethnic groups, it is essential that data on persons of Spanish speaking background be cross-tabulated by sex. For example, the mean income of employed Spanish origin women over 25 years of age is less than half that of employed Spanish origin men over 25. U.S. Bureau of the Census at 66,PC(2)-1C, supra note 1.

In order to evaluate these data and devise remedies where deficiencies in program delivery are found, it often is essential for Federal agencies to have access to data on the race and ethnic origin of the target population; i.e., intended beneficiaries. The Bureau of the Census' publications and figures are a logical source of such data because the Bureau's data undoubtedly are more comprehensive and accurate than those from any other source. If, however, the Bureau has undercounted persons of Spanish speaking background, when Federal officials compare data on participation of Spanish speaking background persons with census data, they will underestimate this group's rate of participation.[78] As a result, too, agency goals for participation by persons of Spanish speaking background will be too low.

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[77] These data often are collected and compiled by the agencies themselves from applications or administrative forms or by special surveys. The Department of Agriculture requires its constituent agencies to use racial/ethnic data to measure benefit distribution to minority groups. The Department of Health, Education, and Welfare conducts periodic racial/ethnic surveys of schools and hospitals to ensure that there has been compliance with Title VI. The Manpower Administration of the Department of Labor requires States to collect racial and ethnic data on the beneficiaries of their employment service, unemployment insurance, and manpower training and development programs.

[78] For example, the Veterans Administration (VA) reports that 6.7 percent of the purchasers of property are of Spanish speaking background. When compared to 1970 census figures showing 4.4 percent of the population as Spanish origin, the participation rate appears extremely favorable. If there has been a significant Spanish origin undercount, this rate would be less impressive. (The VA does not report the racial/ethnic composition of the cities in which these houses are located. Obviously, if they are in cities with a high concentration of persons of Spanish speaking background, the participation rate would be regarded less positively.) Similarly, only about 5 percent of the housing discrimination complaints received by the Department of Housing and Urban Development (HUD) from minorities in Chicago are from persons of Spanish speaking background although, according to 1970 census data, such persons comprise 19 percent of all minorities there. The low rate of Spanish origin complaints undoubtedly is a result, in part, of HUD's lack of a Spanish language program explaining rights to equal housing opportunity. In developing an adequate information program, HUD needs to know the number and geographic distribution of persons of Spanish speaking background. If there has been a significant undercount of this group, reliance on census data may lead to an insufficient HUD effort.

In addition to the problem of the undercount, Federal officials frequently find that, especially with regard to persons of Spanish speaking background, the information necessary to describe the target population neither has been collected nor compiled by the Bureau. For example, the Farmers Home Administration (FHA) of the Department of Agriculture (USDA) serves persons in rural areas; i.e., places with fewer than 10,000 inhabitants. It has attempted to evaluate the extent to which its programs reach minorities and to set goals for increasing minority participation where necessary. It relies on census data for determining the minority populations in rural areas. USDA reports, however, that it has been unable to obtain satisfactory data on persons of Spanish speaking background in those areas. 79/

79/ USDA stated: "Figures on Spanish surname citizens in the 1970 census were included with whites. Since the census did not set apart the number of Spanish surname citizens in rural areas and towns with up to 10,000 population, States without hard statistical data for Spanish surname citizens in areas eligible for FHA services will use the best possible data available in their respective State." Response to this Commission's April 1973 questionnaire contained in a letter from Joseph R. Wright, Jr., Assistant Secretary for Administration, U.S. Department of Agriculture, to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, June 15, 1973. USDA's difficulties presumably arose because no Spanish speaking background data are published for cities and towns with less than 10,000 total population. These data, however, may be purchased from the Bureau of the Census. Data on persons of Spanish speaking background are published for all counties, regardless of population. See the PC(1)-C, General Social and Economic Characteristics, reports for each State, at Table 119.

EQUAL EMPLOYMENT OPPORTUNITY

A variety of Federal laws and Executive orders require nondiscrimination in employment.[80] Effective implementation of all of these provisions would appear to require the use of data, including census data, on persons of Spanish speaking background as well as other racial/ethnic groups, by sex. For example, the Office of Federal Contract Compliance (OFCC) of the Department of Labor requires each Federal contractor with at least a $50,000 contract and 50 or more employees to develop an affirmative action plan which contains an analysis of the contractor's work force to determine if there are fewer minorities or women in each job category than would be expected by their availability for the job.[81] Goals and timetables must be set to remedy the underutilization of any group.

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[80] Most notable are Title VII of the Civil Rights Act of 1964, which prohibits discrimination by private employers, labor unions, and employment agencies on the grounds of race, sex, religion, or national origin, and establishes the Equal Employment Opportunity Commission (EEOC) to enforce that prohibition; Executive Order 11478, which prohibits such discrimination in Federal employment; the Equal Employment Opportunity Act of 1972, which extends Title VII coverage to State and local government employment, gives the EEOC authority to enforce its decisions in the courts, and enunciates the duties of the Civil Service Commission and all Federal agencies to ensure equal employment opportunity in the Federal civil service; and Executive Order 11246, which prohibits employment discrimination by Federal contractors and assigns the Department of Labor responsibility for overseeing the order.

[81] Revised Order No. 4, 41 C.F.R. §60-2.

Contractors collect their own data on the race, ethnic origin, and sex of their employees. Most do not collect such data with regard to potential employees; that is, the pool of persons from whom applicants are drawn. Thus, in order to conduct a work force analysis, contractors often need both census data and labor force statistics maintained by the Department of Labor.

Similarly, the U.S. Civil Service Commission (CSC) recommends that Federal agencies evaluate their equal employment opportunity programs for minorities and women, based on their availability in the work force, and establish numerical goals and timetables where deficiencies are noted.[82/] To accomplish this, Federal agencies also often need to rely on data from the Bureau of the Census and the Department of Labor's Bureau of Labor Statistics.

The Equal Employment Opportunity Commission (EEOC) does not require employers to develop affirmative action plans unless it determines that an employer is in violation of Title VII of the Civil Rights Act of 1964. Nonetheless, to assist private employers and State and local governments in complying with Title VII, EEOC compiles data on the minority and female work force.[83/] In determining the available work force, EEOC uses

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82/ Memorandum from Robert E. Hampton, Chairman, U.S. Civil Service Commission, to heads of departments and agencies, "Use of Employment Goals and Timetables in Agency Equal Employment Opportunity Programs," May 11, 1971.

83/ EEOC requires that employers of 100 or more persons provide it with the total number of blacks, Spanish Americans, American Indians, Asian Americans, other minorities, and whites they employ, cross-referenced by sex and job classifications. EEOC uses these data as a principal source of information to identify the minority and female labor force. See U.S. Equal Employment Opportunity Commission, I and II, Job Patterns for Minorities and Women in Private Industry (1970).

some census data.[84] Further, in its guidebook for employers, EEOC recommends the use of census data on minorities and females in conducting utilization analyses and developing affirmative action goals.[85] EEOC notes that census data are particularly useful in obtaining general population,[86] education, employment, and occupational status information.

Even where affirmative action plans are not required by law, it would be difficult for an employer to assure equal employment opportunity without conducting a work force analysis to identify deficiencies and setting goals and timetables for their remedy.[87] Census data generally would be an essential tool in determining the racial/ethnic composition of the available work force.

84/ Telephone interview with William H. Enneis, Chief, Research Studies Division, Office of Research, EEOC, Sept. 21, 1973.

85/ U.S. Equal Employment Opportunity Commission, 2 Affirmative Action and Equal Employment: A Guidebook for Employers B1, B2 (undated).

86/ There are a number of occupations for which census data on population would be used for work force analyses and affirmative action development, such as apprenticeship jobs in the construction industry and assembly line and other blue collar jobs where training is provided by the employer. General population data would not be used, however, in conducting work force analyses and developing affirmative action goals for occupations such as doctors, lawyers, or engineers which have highly specific occupational qualifications.

87/ While the authority of OFCC's Revised Order No. 4, *supra* note 81, extends only to contract compliance, the substance of the order is to describe how an employer can take steps to ensure nondiscrimination in employment practices. All employers should develop plans meeting the standards set forth in that order.

In a report prepared under the auspices of EEOC, employment data collected by the Bureau of the Census were found to be deficient.[88] The report noted that:

> There is a great need for giving Spanish surnameds some of the same attention Negro and nonwhite groups receive in statistical accounts....One thing is certain....the awakening, the restlessness, the self-concept of a whole people--America's second minority--will require it sooner than those outside the [Southwest] region might suspect.

While this report was prepared prior to the 1970 census, its findings still are applicable.[89]

Moreover, if there has been a significant undercount of persons of Spanish speaking background in the 1970 census, employers using census data in their work force analyses will not identify accurately the extent of their underemployment; and goals set for increasing Mexican American, Puerto Rican, and other Spanish speaking background employment will be too low. For persons of Spanish speaking background, this could mean the loss of many potential jobs.[90]

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[88] Fred H. Schmidt, Spanish Surnamed American Employment in the Southwest (prepared for the Colorado Civil Rights Commission, at 80-81 (1970). The report also found that the deficiencies in available data on persons of Spanish surname were not limited to just census data but to all Federal statistical activities.

[89] The Bureau states that: "Rather than being deficient, 1970 census data on persons of Spanish surname in the Southwest include full details on their labor force status, occupation, industry, and income. The 1970 census provides virtually the same amount of socioeconomic data for the Negro and Spanish groups." Bureau of the Census response, supra note 29, at 5. The EEOC report refers not only to the categories of data published by the Census, but also to the quality of those data.

[90] In the Federal civil service alone, a national undercount for persons of Spanish speaking background of, for example, 25 percent could mean the loss of thousands of possible Federal jobs. See note 69, supra and p. 48 infra.

Chapter 3

THE BUREAU'S ESTIMATES OF POPULATION UNDERCOUNTS

There have been numerous allegations that the Nineteenth Decennial (1970) Census produced an undercount of persons of Spanish speaking background. Even before official totals were published in 1972, there were many who believed that these totals would be too low.[91]

The Bureau is well aware of the allegations. Nonetheless, although estimates of the undercount of the Nineteenth Decennial Census were determined by the Bureau of the Census for the population as a whole and for the black population, they were not made for persons of Spanish speaking background.[92] These undercount estimates were produced by comparing census data with an independent estimate of the population from other data sources, principally vital statistics[93] and immigration data. Medicare enrollment, emigration data, past census data, and complex analyses of age-sex-race distributions for blacks and whites also were used.[94] The fact that these data generally are not maintained separately for the Spanish speaking background population is at the core of the Bureau's belief that it presently is unable to provide reliable estimates as to the undercount of the Spanish speaking background population.[95/]

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[91] See Chapter 4, *infra*.

[92] On April 25, 1973, the Bureau of the Census estimated that 5.3 million Americans (2.5 percent) were not counted in the 1970 census. Of that number, 3.45 million were white (1.9 percent of the total white population) and 1.87 million were black (7.7 percent of the total black population). U.S. Department of Commerce Press Release, *supra* note 11.

[93] Vital statistics cover births and deaths. They generally are not available on persons of Spanish speaking background.

[94] U.S. Department of Commerce Press Release, *supra* note 11.

The picture is not as bleak as it first might appear. There are data available from a variety of sources on the Spanish speaking background population. For example, the Immigration and Naturalization Service (INS) collects data on the nationality of immigrants to the United States.[96/] Thus, these data possibly might be used as an independent source of information on Cubans, Mexicans, and persons of other Latin American countries but would be of no assistance in enumerating Puerto Ricans. However, the Planning Board of the Commonwealth of Puerto Rico maintains statistics on the migration of Puerto Ricans to the mainland.

Vital statistics are collected by State and local governments. Recommended standards for these statistics are set by the National Center for Health Statistics (NCHS) of the Health Services and Mental Health Administration, Department of Health, Education, and Welfare (HEW). NCHS recommends that birth and death certificates

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[95/] Levine interview, supra note 28. The Bureau further states that: "In spite of our serious reservations regarding the possibility of arriving at reliable estimates of the understatement of the Spanish origin population at the National level for 1970, we have been investigating the available materials in the hope of arriving at some approximation of the coverage error." Bureau of the Census response, supra note 29, at 5.

[96/] At the point of entry into the United States, INS collects data on the country of last residence, country of birth, sex, age, and other demographic data on each alien admitted into the U. S. An annual Alien Address Report provides data on the State of residence and the nationality of each alien reporting. Telephone interview with Robert G. Prosek, Chief of Statistics, INS, Oct. 9, 1973.

contain information on race, but it does not recommend maintaining data on national origin.[97] States report their data to NCHS which then tabulates only the categories "whites" and "other racial groups"[98] with a subcategory "Negro."[99]

Nonetheless, since HEW recommends, but does not dictate, the items of information collected in conjunction with vital statistics, some State and local governments vary the "racial" categories used for collection and tabulation and, in fact, maintain data on persons of Spanish speaking background. The Bureau thus might make use of these possible "independent" sources of data to estimate the approximate size of the undercount for these jurisdictions. For example, New York City health agencies compile data on Puerto Ricans by collecting data on the number of babies born to first generation Puerto Rican mothers.[100/]

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[97] NCHS does not specify what races should be reported but indicates that race means "white, Negro, American Indian, etc." The "white" category includes Mexican Americans, Puerto Ricans, and other persons of Spanish origin.

[98] This category encompasses Japanese, Chinese, and American Indian.

[99] Even vital statistics on blacks have been claimed to be difficult to obtain, specifically birth records on blacks residing in the South. Letter from Ida C. Merriam, Assistant Commissioner for Research and Statistics, Social Security Administration, HEW, to Cynthia N. Graae, program analyst, U.S. Commission on Civil Rights, Mar. 13, 1972.

Some of the five southwestern States[101/] maintain unpublished data on the number of births and deaths of persons who have Spanish surnames.[102/] In addition, the Bureau of the Census possibly could

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[100/] One of the questions asked on birth certificates in New York City is the mother's birthplace. Tabulations then are made of the number of children born to mothers who were born in Puerto Rico. Telephone interview with Louis Pincus, acting director, Bureau of Health and Analysis of Statistics, Health Services Administration of the City of New York, Jan. 23, 1974.

[101/] Vital statistics on person of Spanish surname have been tabulated in Texas since 1962; in California, since 1963; and, in Arizona, since 1965. During the late 1960's and early 1970's, Colorado tabulated them intermittently but as of 1973 was tabulating them regularly. New Mexico tabulates Spanish surname data on a sample basis. The tabulated data are not published by any of these States, and the lists used for coding Spanish surnames vary from State to State. A meeting is planned to encourage the five States to use uniform procedures in coding Spanish surnames and publish the tabulations. Telephone interview with Dr. Leobardo Estrada, Department of Sociology, North Texas State University, Jan. 17, 1974.

[102/] The Bureau of the Census collects data on the Spanish surname population of the five southwestern States. U.S. Bureau of the Census, Department of Commerce, PC(2)-1D, 1970 Census of Population: Subject Reports -- Persons of Spanish Surname (June 1973). Spanish surname vital statistics could be used to estimate the undercount of the Spanish surname population in these States. Interview with Drs. Leobardo Estrada, Department of Sociology, North Texas State University, and Jose Hernandez, Department of Sociology, University of Arizona, Sept. 21, 1973, in Washington, D.C.

use vital statistics data available from Puerto Rico to develop life and fertility tables[103] for use in estimating the undercount of the first and second generation Puerto Rican population in the United States.[104]

Finally, there is a variety of sources of data maintained by Federal, State, and local agencies, such as school enrollment and employment, which might be used by the Bureau to evaluate the accuracy of its census counts.[105] Although they have not done so, Bureau officials hope to make use of such data.[106]

103/ These tables would provide information on birth and death rates, enabling estimates of total population to be made from a narrower source of data, such as school enrollment.

104/ The Bureau of the Census indicated that it was evaluating the use of such data from Puerto Rico. Interview with Jacob S. Siegel, staff assistant, Population Division, U.S. Bureau of the Census, Aug. 20, 1973.

105/ The Bureau states that the methods suggested by this report in this section "would not provide the necessary, reliable data to measure undercount, nor would they account for internal migration." Bureau of the Census response, *supra* note 29, at 5. In our opinion some of the methods reported here are no less reliable than the Bureau's presently used methods for measuring emigration in order to estimate the undercount of the total population.

106/ Interview with Edward Fernandez, Special Assistant to the Chief of the Population Division, U.S. Bureau of the Census, May 30, 1973.

The Bureau of the Census has created an office, headed by a Special Assistant to the Chief of the Population Division, concerned with data on persons of Spanish speaking background. The role of this office is to advise the Chief of the Population Division on matters concerning data on this population group. This Special Assistant has contacted other staff members of the Bureau of the Census[107/] to discuss the feasibility of using alternative data, i.e., other than vital statistics, to estimate the undercount of persons of Spanish speaking background in the United States.

It should be noted that the use of data from varied State categories for vital statistics and from myriad Federal, State, and local data banks is satisfactory only on a temporary basis. It is no substitute for the adoption of a uniform Spanish origin category by all jurisdictions for the collection of data on vital statistics.

The Bureau of the Census and HEW are in close contact concerning the collection and use of vital statistics. Thus, the Bureau is in a unique position to suggest that NCHS recommend to State and local vital statistics data collection agencies that they obtain data on persons of Spanish speaking background.

[107/] Siegel interview, *supra* note 104.

Moreover, it is incumbent upon the Bureau to apprise OMB, the Federal agency with Government-wide responsibility for setting guidelines for the collection of Federal statistics,[108] of its need for vital statistics data on persons of Spanish speaking background. As of the fall of 1973, however, the Bureau had not taken this important step.[109]

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[108] OMB was assigned this responsibility by Executive Order 10253 (June 11, 1951) and the Budget and Accounting Procedures Act of 1950; 31 U.S.C. §18b. Under the Federal Reports Act of 1942, 44 U.S.C. §3501 et seq., OMB is responsible for examining the informational needs of Federal agencies and coordinating information collection services. OMB has not required that categories for collecting vital statistics include Mexican Americans, Puerto Ricans, or Cubans.

[109] Interview with Paul Krueger, Acting Director, Statistical Policy Division, OMB, and staff, Sept. 20, 1973.

Chapter 4

INDICATIONS OF A SPANISH SPEAKING BACKGROUND UNDERCOUNT

Bureau officials have discussed the possibility of a Spanish speaking background undercount with representatives of the Cabinet Committee on Opportunities for Spanish Speaking People and Spanish speaking Members of Congress, such as Representative Herman Badillo of New York City. Bureau officials say that they have found no evidence sufficiently well documented to show that the 1970 census figures were incorrect.[110/]

In January 1974, however, the Bureau reported that as of March 1973 the Spanish origin population was 10.7 million, an increase of over 1.5 million persons (17 percent) since the 1970 census. It is improbable that

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[110/] Levine interview, *supra* note 28. The Bureau states that it requires independent sources of data to conduct demographic analysis to estimate the degree of undercount; e.g., vital statistics data collected by State and local governments. The Bureau repeatedly has stated that the only evidence of an undercount it would accept in lieu of demographic analysis would be names of persons claiming not to have been counted which then could be compared with Bureau registers. *Hearings on the Reappointment of Robert E. Hampton to be U.S. Civil Service Commissioner and Nomination of Vincent P. Barabba to be Director, Bureau of the Census, Before the Senate Comm. on Post Office and Civil Service*, 93rd Cong., 1st Sess., 59 (1973).

Further, a former Director of the Bureau stated that the Bureau was satisfied with the accuracy of the count of persons of Spanish speaking background in the 1970 census. Brown letter, *supra* note 31.

this increase is due to population growth alone.[111] It is likely that this figure reflects some correction for an undercount in the 1970 census. In fact, the Bureau stated that the significant increase in the Spanish origin population since the 1970 census, in part, was due to improved survey procedures.[112]

There are three additional reasons to believe that there was a significant undercount[113] of the Spanish speaking background population of the United States in the 1970 census: (1) the Bureau's own estimate of the black undercount in the 1970 census; (2) privately sponsored reports and surveys of the Spanish speaking background population; and (3) the insensitivity to Mexican American, Puerto Rican, and Cuban communities of the methodology used by the Bureau in the 1970 census.[114/] The first two of these are discussed below. The methodology used in the 1970 census is discussed in Chapter 5.

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[111] It is significant to note that the number of Mexican Americans counted was 6,293,000, an increase of 38.8 percent since the 1970 census. This increase undoubtedly was attributable, at least in part, to improved classification of persons of Spanish speaking background. The number of persons of Central or South American origin was reported at 597,000, a decrease of almost one million and a loss of over 60 percent since 1970. Nonetheless, the Bureau maintains that two-thirds of the increase in Spanish origin probably was due to population increase. The number of Puerto Ricans counted was 1,548,000, an increase of 8.3 percent over the 1970 census. The number of Cubans counted was 733,000, an increase of 34.6 percent. U.S. Bureau of the Census, Department of Commerce, Series P-20, No. 259, Current Population Reports: Persons of Spanish Origin in the United States -- March 1973 (Jan. 1974).

[112] The March 1973 survey figures were due in part to changes in data collection techniques. For example, the March 1973 survey was based on direct interviews rather than mailed questionnaires as used in the 1970 census. The March survey had four categories for denoting Mexican origin (Mexican American, Chicano, Mexican, and Mexicano) while the 1970 census had only one (Mexican). The categories for Puerto Rican origin were not expanded. Another change which may have affected the survey figures is the method used to classify children under 14 in households where the head or wife was of Spanish origin. While these improvements do not cover the range suggested by this report, it is significant that the revised technology used in the March 1973 survey resulted in a higher count of persons of Spanish speaking background and that the Bureau is aware of the value of upgraded data collection techniques.

[113] See note 2 *supra* for the definition of the undercount of persons of Spanish speaking background, as used in this report.

[114/] The Bureau states that:

> There is no evidence that there is a direct relationship between the undercount for blacks and the undercount for Spanish. The Bureau's estimate for undercount of the white population (and 98 percent of the population of Spanish origin is classified as white) is 1.9 percent. Almost all of the privately sponsored reports and surveys of the Spanish population cited in your report are either impressionistic estimates or estimates obtained without the required quality control measures needed to prevent double counting, to completely cover the universe, and to adequately represent the population being measured. The Bureau's methodology in the 1970 census was not insensitive to Mexican American, Puerto Rican, and Cuban communities. Everyone in the field organization, both permanent and temporary was aware of the importance of recruiting minority enumerators to work in communities with heavy concentrations of minorities and worked toward that end. In selected areas where many of the residents speak and read Spanish, instruction sheets in Spanish were included with the English questionnaires. Spanish language questionnaires were available for the enumerators to refer to. During the final stages of the enumeration, many newspapers printed "Were You Counted?" forms in Spanish. And "Were You Counted?" cards were also printed in Spanish and special campaigns conducted to locate individuals who might have been missed by the census. Bureau of the Census response, *supra* note 29, at 6-7.

THE BLACK UNDERCOUNT

The strongest indication that there was an undercount of persons of Spanish speaking background in the 1970 census comes from the Bureau of the Census itself. It reports that, in the 1970, census, there was a 7.7 percent undercount of the black population.[115] Blacks, Puerto Ricans, and Mexican Americans live in similar low socioeconomic, high density environments which produce a high probability of undercounting. Mail delivery in these areas often is poor; and, thus, census forms may not have reached all households. Further, it often is in these areas that there are persons living under illegal,[116] or what they perceive to be illegal, conditions. Such persons, who include those who live in violation of occupancy codes, husbands of women on welfare, and people who are uncertain of their right to reside in this country, may go uncounted because they are

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115/ U.S. Bureau of the Census, supra note 2.

116/ Of the more than 420,000 deportable aliens located in 1971, 83 percent were Mexican. U.S. Department of Justice, Immigration and Naturalization Service, 1971 Annual Report, at 8.

reluctant to be identified.[117/] In inner city areas, too, there are many with only a limited education; for these people, the census questions may have been too complex, producing inadequate or erroneous responses or leading to failure to complete the entire census questionnaire. In addition to these problems, persons of Spanish speaking background often have difficulty completing the census forms as a result of lack of fluency in the English language.

Thus, it is widely believed that the undercount of persons of Spanish speaking background must be at least as great as that of blacks. For example, Whitney Young, late executive director of the National Urban League, testified before a congressional committee investigating the accuracy of the 1970 census that

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[117/] Any government official entering a predominantly Mexican origin area immediately is suspected of being an immigration officer. Persons in these areas are reluctant to divulge information to strangers because of a history of deportation of resident aliens of Mexican descent and even American citizens of Mexican descent, besides illegal aliens. In fact, from April to May 1973, INS conducted mass raids in areas of Los Angeles with large Mexican origin populations. Resident aliens and American citizens of Mexican descent were arrested and detained for deportation. This has resulted in the Los Angeles American Civil Liberties Union filing a lawsuit against the INS, Loya v. INS, No. Civ. 73-1435-FW (C.D. Cal., filed June 22, 1973). Telephone interview with Fred Okrand, attorney, ACLU Foundation of Southern California, Jan. 25, 1974. In fact, it was noted in the congressional hearings on the accuracy of the 1970 census that INS conducted raids in Los Angeles in search of illegal aliens at the same time the 1970 census was in progress. Census Hearings, supra note 3, at 42.

the National Urban League believed that the 1970 undercount among Spanish Americans probably was much greater than it was for blacks.[118] This belief also is subscribed to by the Mexican American Population Commission of California (MAPC) which estimated the Spanish surname[119] population of California at 3.3 million. MAPC used the Bureau's estimate of 3.1 million persons of Spanish heritage in California[120] and increased this estimate by 7.7 percent under the rationale that the Spanish heritage undercount was at least proportionally equal to the black undercount.[121]

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[118] Testimony of Whitney Young, Census Hearings, supra note 3, at 30. See also, Joint Center for Political Studies, "Census Undercount Hurts Blacks," Focus, May 1973 at 3.

[119] MAPC used the term "Spanish surname" broadly to describe California's entire Spanish speaking background population, not merely those with Spanish surnames.

[120] The Bureau's estimate of 3.1 million persons of Spanish heritage in California is identical to a MAPC estimate made prior to release of 1970 census figures. MAPC had estimated the California "Spanish surname" population at 3,140,000 based on published and unpublished California State Department of Education school statistics for 1966, 1967, 1969, and 1970; California parochial school enrollment statistics for 1970; and labor force statistics from the California's State Manpower Plan of Human Resources Development, including its Manpower Plan of Fiscal Year 1970. Mexican American Population Commission of California, Mexican American Population in California as of April 1973, with Projections to 1980: A Biannual Census Report (June 1973).

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[121] MAPC also questioned the Bureau's estimate of the Spanish origin population from the current population surveys for 1969 and 1971 because the Bureau reported that in 1971 there were 8,956,000 persons of Spanish origin in the United States, a marked decrease from the Bureau's 1969 report of 9,230,000 Spanish origin persons. MAPC determined that such a decrease in numbers did not reflect an actual population decline because it was not corroborated by the birth rate of that group. Letter from Robert L. Gnaizda, attorney, Public Advocates, Inc., to John A. Buggs, Acting Staff Director, U.S. Commission on Civil Rights, Oct. 29, 1971, enclosing a letter from Mario Obledo, executive director, Mexican-American Legal Defense and Educational Fund, and Robert B. Gnaizda, general counsel for Population Commission and attorney, Public Advocates, Inc., to George Hay Brown, Director, Bureau of the Census, U.S. Department of Commerce, Oct. 27, 1971. The 1969 and 1971 statistics are reported by the Bureau of the Census, respectively, in U.S. Bureau of the Census, Department of Commerce, Series P-20, No. 213, *Current Population Reports: Persons of Spanish Origin in the United States -- November 1969* (Feb. 1971) and Series P-20, No. 224, *Current Population Reports: Selected Characteristics of Persons and Families of Mexican, Puerto Rican, and other Spanish Origin* (Oct. 1971). See also Siegel report, *supra* note 5.

INDEPENDENT REPORTS AND SURVEYS[122]

In its 1971 Annual Report, the Cabinet Committee on Opportunities for Spanish Speaking People estimated the Spanish speaking background population in the United States at 12 million people.[123]

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[122] This section presents a variety of surveys and reports for the Bureau's consideration. It places heavy emphasis on the count of Puerto Ricans because many organizations in the East have attempted to measure the Puerto Rican population in varous locations in the continental United States. They have conducted independent surveys and examined existing data banks, including school, health, and manpower records. The principal efforts to measure the Mexican American undercount have been conducted by MAPC. Its most recent attempt to estimate the undercount is based on information from the Bureau of the Census itself. This research is discussed in Chapter 4, page 47, *supra* and Chapter 5, *infra*.

The Bureau states that the estimates in this section are "impressionistic, unscientific, and based on sheer guess work." It noted:

> The estimates cited are not based on an enumeration of the population, as was the 1970 census, but rather are based on a miscellaneous collection of unassimilated data, including such sources as onsite visits, direct contact with local governments, among others. Bureau of the Census response, *supra* note 29, at 8.

[123] *Annual Report of the Cabinet Committee on Opportunities for Spanish Speaking People, Fiscal Year 1971*. This estimate, which is broken down by State, is based on information derived from the Bureau's yearly population survey for 1969; HEW minority school enrollment survey, 1968-69; HEW Region V (Chicago) demographic survey; immigration and migration data; Cuban refugee data; direct contact with local governments; and onsite visits by Cabinet Committee personnel.

The Bureau of the Census' 1970 figures estimated the "Spanish-origin" population in the United States at just over 9 million[124/] people--a difference of 3 million people or over 30 percent. Many Spanish speaking sociologists and demographers also believe that there has been a significant undercount of the Spanish speaking population in the United States.[125/]

Although the scientific validity of the Cabinet Committee's population estimates has been questioned,[126/] there have been other counts, surveys, and estimates which indicate a significant undercount of the Spanish speaking background population in the 1970 census. As shown in Table I, estimates of the New York City

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[124/] U.S. Bureau of the Census, PC(2)-1C, *supra* note 1.

[125/] Estrada report, *supra* note 13.

[126/] U.S. Department of Health, Education, and Welfare, "Multi-National Spanish Speaking Communities in the Midwest," prepared by Isidro Lucas, Assistant to the Regional Director, Region V (Chicago), for presentation at the Multilingual/Multicultural Conference held in San Diego, Calif., Apr. 1-5, 1973, at 14.

Puerto Rican population are up to 50 percent higher than the Bureau's estimates.[127] The higher estimates are based on data on Puerto Rican students in the New York City public school system and on welfare statistics from the New York State Department of Social Services. Also indicated in Table I (page 51) are estimates based on statistics maintained by the Department of Labor of the Commonwealth of Puerto Rico which indicate a higher Puerto Rican population in selected New England cities than is shown by 1970 census figures.[128]

The most thorough independent Puerto Rican count noted to date is the 1970 Population Health Survey. This survey, conducted by the City University of New York (CUNY), concludes that first and second generation Puerto Ricans in New York City were undercounted by as much as 25 percent. The Bureau of the Census reported that

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[127] See also Edward Burks, "Total of Puerto Rican Descent in City Put at 846,731," *N.Y. Times*, Oct. 2, 1972.

[128] The Bureau states that:

> The estimates of the Department of Labor of the Commonwealth of Puerto Rico based on public school and welfare statistics do not provide accurate measures of the population. The other estimates included in Table 1 prepared by the Department of Labor of the Commonwealth of Puerto Rico for cities in New England are also not reliable estimates, collected with a uniform set of questions, time reference, and geographic coverage, but rather are rough approximations based on information obtained from welfare agencies, police departments, and schools. Bureau of the Census response, *supra* note 29, at 8.

TABLE I

Comparison Between Census Data and Independent Estimates of the Puerto Rican Population in Selected Areas
(Persons of Puerto Rican Origin)

Geographic Area	U.S. Bureau of the Census[a]	Independent Estimates
New York City	846,731	1,300,000[b] 1,050,000[c]
Boston (City)	7,747	30,000[d]
Springfield-Holyoke-Chicopee, Mass. (SMSA)	5,612	20,500[d]
Bridgeport, Conn.	9,618	30,000[e]

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a. U.S. Bureau of the Census, Department of Commerce, PC(SI)-30, *1970 Census of Population: Persons of Spanish Ancestry* (Feb. 1973).

b. Department of Labor of the Commonwealth of Puerto Rico, New York City Office.

c. New York State Department of Labor.

d. Department of Labor of the Commonwealth of Puerto Rico, Massachusetts Office.

e. Department of Labor of the Commonwealth of Puerto Rico, Connecticut Office.

on Census Day 1970 there were an estimated 811,800 first and second generation Puerto Ricans[129] in New York City.[130] The 1970 Population Health Survey estimated that on that date there were 1,016,500 first and second generation Puerto Ricans in the city,[131] a difference of 204,700 persons.[132]

An undercount of the Puerto Rican population also was alleged in Boston. In the summer of 1970, Action for Boston Community Development, Inc. (ABCD), in conjunction with the Institute of

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[129] The 1970 census figures for first and second generation Puerto Ricans in the U. S. are based on a 15 percent sample survey and, therefore, are an estimate. First and second generation Puerto Ricans are defined as those born in Puerto Rico or with at least one parent born there.

[130] U.S. Bureau of the Census, Department of Commerce, PC(2)-1E, 1970 Census of Population: Subject Reports -- Puerto Ricans in the United States (June 1973).

[131] Morey J. Wantman, Morton Israel, and Leonard S. Kogan, Population Health Survey: Estimates of Population Characteristics, New York City, 1964-65-66-68-70 (Center for Social Research, The Graduate School of the City University of New York, Dec. 1972). Data obtained from this 1970 Population Health Survey were based on a sample of approximately 5,000 households.

[132] This is undoubtedly a conservative measure of the undercount of Puerto Ricans in New York City. CUNY's techniques probably were not developed sufficiently to uncover the full extent of the undercount of any racial/ethnic minority group. Indeed, CUNY's estimate of the total black population in New York (1,776,000) was lower than that of the 1970 census (1,846,000) it did not even replicate the large undercount of the black population known to exist.

Human Sciences of Boston College, conducted a survey of Boston's Spanish speaking background community. Personal interviews were held in the respondents' homes by a native Spanish speaking interviewer in 535 households, comprising a total of 2,249 members.[133]

The Bureau of the Census reported that persons of Puerto Rican birth or parentage comprised 41 percent of the Spanish-language population of Boston.[134] The ABCD survey found, however, that 73 percent of Boston's Spanish-language community were of Puerto Rican birth or parentage.[135] The ABCD survey's estimate of

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133/ Action for Boston Community Development, Inc., The Spanish Speaking in Boston: Findings of the 1970 U.S. Census (by Adriana Gianturco and Norman Aronin) at 20 (Nov. 1972). The authors assume that the use of Spanish speaking interviewers to gather data accounted for the results of their survey. Each interviewer made every effort to establish rapport with the respondents, explaining the importance of ABCD's survey. The Bureau of the Census did not make such an effort to gather data from Spanish speaking background communities in the 1970 census. See Chapter 5 infra.

134/ The Bureau of the Census reported that 17,984 persons of Spanish language resided in Boston, of which 7,325 were of Puerto Rican birth or parentage. U.S. Bureau of the Census, Department of Commerce, PC(SI)-30, 1970 Census of Population: Persons of Spanish Ancestry (Feb. 1973).

135/ Action for Boston Community Development, Inc., supra note 133 at 27. In assessing whether there has been a significant undercount of persons of Spanish speaking background, the Bureau of the Census' definition of undercount is persons missed and, therefore, not counted. See note 2 supra.

the Puerto Rican population of Boston was 79 percent higher than the 1970 census figures.[136]

A study done under contract for the Department of Health, Education, and Welfare's Social and Rehabilitation Service (SRS) has concluded that persons of Cuban birth in the United States were undercounted by 9.3 percent in the 1970 census.[137] This study compared the 1970 census figures for persons of Cuban birth with an estimate of the first generation Cuban population derived from the alien registration cards which all aliens in the United States are required to file in the month of January each year.[138] Persons of Cuban birth residing in Florida were undercounted by 18.3 percent according to this study.[139] The report states that "the core of the huge underestimation (34,242) detected in Florida is harder to dismiss on the grounds of evaluative error. At this point, the only plausible explanation is that the Census 'missed' a considerable number of Cubans in Florida in 1970."[140]

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[136] Action for Boston Community Development, Inc., Boston's Spanish Speaking Community: Findings of a Field Survey (by Adriana Gianturco and Norman Aronin) at 2 (Oct. 1971). This report used sample survey data to describe the characteristics of the Spanish speaking background population in Boston. It does not attempt to estimate the total size of that population. Nonetheless, the authors believed that the 1970 census count of the total number of persons of Spanish speaking background in Boston was "statistically reliable." In other words, the report implied that some Puerto Ricans had been misidentified in the 1970 census as belonging to some non-Puerto Rican Spanish speaking background group. The belief that the 1970 census count of all persons of Spanish speaking background was statistically reliable was based upon a search of census records for the names and addresses of 111 Spanish speaking heads of households of ABCD's sample in the Boston area who claimed to have been in Boston in April 1970 but not to have been counted by the 1970 census. The search revealed that all but 13 had in fact been counted. The authors did not determine the number of heads of households in their sample which were in Boston in April 1970 and thus should have been counted by the 1970 census. They also did not determine if any heads of households mistakenly believed that they had been counted. Thus, it is not possible to use ABCD's data to estimate a percentage of the undercount of the 1970 census or even to conclude that there was no undercount. Further, the sample upon which this survey was drawn was not likely to reflect uncounted households and individuals. Because of a limited budget, the respondents selected for the ABCD survey were a subpopulation of "relatively stable, relatively large households, whereas the census questionnaire presumably reaches Spanish speaking people in all types of households." Action for Boston Community Development, *supra* note 133 at 24. It is, however, the less stable households, not included in the ABCD survey, where the undercount would be expected to occur.

137/ Rafael J. Prohias and Lourdes Casal, The Cuban Minority in the U.S.: Preliminary Report on Need Identification and Program Evaluation (Florida Atlantic University, Aug. 1973).

138/ Immigration and Naturalization Service Form I-53.

139/ Prohias report, *supra* note 137 at Table 8. The 1970 census estimate of persons of Cuban birth in Florida was 187,095. This report estimated that population at 221,337 based on alien registration data.

140/ *Id*. at 26. The Bureau states that:

> A review of the Prohias and Casal report suggests that they made numerous methodological errors, such as assuming that the 1970 census date was September 1, 1970 rather than April 1, 1970, and making adjustments to the census count for Cuban arrivals between September 1, 1970 and January 1971 rather than between April 1970 and January 1971; assuming an unsubstantiated underregistration of aliens; and making comparisons by States for differing periods of time, thereby miminizing the possible number of relocations during 1970. Bureau of the Census response, *supra* note 29, at 9.

Chapter 5

THE BUREAU'S METHODOLOGY AND DATA COLLECTION

There were a number of lawsuits filed against the Bureau of the Census prior to the conduct of the 1970 census alleging that the methodology to be used would have a discriminatory impact against minority groups. For example, a class action suit was filed by Mexican Americans in California[141] seeking to require that the Bureau provide a Mexican American category on all questionnaires. It was argued that the exclusion of such a category would lead to an undercount of a portion of that population.

The Chinese community of San Francisco filed a class action suit against the Bureau[142] because it felt that the use of the mailout/mailback technique[143] in a non-English-speaking community would create a significant undercount. A black community group in the District of Columbia filed a suit against the Bureau of the Census[144] seeking to enjoin its use of the mailout/mailback method of enumeration, alleging that this technique would result in undercounting in major urban areas.[145]

The Bureau, thus, was aware of the possiblity that the methods and procedures used in the 1970 census might adversely affect minorities; and, in fact, after the census was conducted, it became even clearer that there were a number of problems with the Bureau's techniques for identifying and collecting data on the Spanish speaking background population in the United States.

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[141] Prieto v. Stans, 321 F. Supp. 420 (N.D. Cal. 1970).

[142] Quon v. Stans, 309 F. Supp. 604 (N.D. Cal. 1970).

[143] This technique is discussed on p. 58, infra.

[144] West End Neighborhood Corp. v. Stans, 312 F. Supp. 1066 (D.D.C. 1970).

[145] The courts denied relief to the plaintiffs in all three of the lawsuits stating that the Bureau's plans were not arbitrary or capricious but reasonably connected to the purpose of conducting a decennial census. The courts left undecided the question of whether or not the techniques being challenged were likely to result in an undercount.

Both the techniques which the Bureau used to gather information and the nature of the information the Bureau proposed to gather were planned with little attention to persons of Spanish speaking background. There were three basic areas[146/] in which the Bureau's methodology contributed to the likelihood of a significant undercount of persons of Spanish speaking background; (1) the plan for distribution and collection of questionnaires was likely to have missed many families of Spanish speaking background; (2) most persons of Spanish speaking background did not have easy access to a Spanish census form; and (3) there was no question on the basic census questionnaire which could be used to identify persons of Spanish speaking background and the questions on the sample surveys largely were inadequate.

FIELD COLLECTION TECHNIQUES

For approximately 63.3 percent of the 1970 census questionnaires, the Bureau used a mailout/mailback procedure. Under this procedure, mail carriers

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[146/] A related area, the failure of the Bureau to use a sufficient number of bilingual enumerators and community education specialists, is discussed in Chapter 6, pp. 87, 90, *infra*.

delivered to each housing unit on their routes on March 28, 1970, an envelope containing the census questionnaire for that household, a letter from the Secretary of Commerce, an instruction sheet giving item-by-item directions for completion, and a postpaid return envelope. Householders were asked to fill in the questionnaires and mail them back to the local census office on April 1, 1970.[147/]

Addresses for these questionnaires were obtained by an intricate process started well in advance of the census. An initial set of address labels was prepared on computer tape from commercial mailing lists for the major metropolitan areas. With the assistance of the Post Office

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[147/] U.S. Bureau of the Census, supra note 4 at 34. The conventional enumeration method was used in the remaining 37.7 percent of the population and housing units. These were located primarily in small towns and rural areas where adequate mailing lists generally were not available. In these areas on March 28, 1970, mail carriers left an unaddressed census package consisting of an instruction sheet and a short questionnaire at each residence. Respondents were instructed to complete the questionnaire and have it ready to be collected by an enumerator on April 1. Using prepared census maps, enumerators systematically canvassed the areas assigned to them, listing each unit on an address register as they visited it. The enumerator asked for the questionnaire at each occupied housing unit, scanned it for completeness, and obtained any missing information. For the 1980 census, the Bureau expects to enumerate 90 percent of the population through the mailout/mailback technique. U.S. Bureau of the Census, Department of Commerce, "Some Early Thoughts on the 1980 U.S. Census," prepared by David L. Kaplan, Chief, Demographic Census Staff, undated report presented to the census advisory committees for their comments, at 6.

Department and its mail carriers, these addresses were corrected or deleted as necessary and missing addresses were added.[148/]

In its findings and recommendations on the accuracy of the 1970 census, the Subcommittee on Census and Statistics of the House Post Office and Civil Service Committee recalled that the "...mailout/mailback technique... was developed because under the door-to-door enumeration system used in past census taking, large numbers of people were not counted."[149/] Nonetheless, allegations have been made that the mailout/mailback technique

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[148/] Three different post office reviews were made for these corrections. The computer tape was then updated and processed through an "address coding guide" for allocation of necessary geographic information (such as block, census tract, city, county, and congressional district codes). Finally, the addresses on the tape were identified by census field control codes for district office, enumeration district, and serial number within enumeration district. This process yielded address labels and address registers for all addresses in each enumeration district. Census district office personnel also conducted a "precanvass" in the inner city areas of 21 cities in an effort to locate and add to the address lists any housing units that might have been inadvertently omitted in these difficult-to-enumerate areas.

[149/] Census Hearings, *supra* note 3, at 66. For example, in the 1960 census, where such a system was used, there was an estimated 8 percent undercount of the black population. Nonetheless, in the 1970 census, there was still an estimated 7.7 percent undercount of this group. One might conclude from these data that the conversion from the door-to-door enumeration to the mailout/mailback did not have an appreciable effect on reducing the rate of the undercount. Sufficient information to make such a judgment is not available. In fact, one argument presented by OMB officials is that had it not been for the use of the mailout/mailback procedures, the undercount for minority group persons and inner city residents may well have been greater in 1970 than it had been in 1960. Krueger interview, *supra* note 109. Such factors as the increasing density of the inner city as well as greater organized resistance to the census may have operated to cancel out the effects of the Bureau's efforts. It also has been alleged, however, that where census enumerators were used there was some reluctance on their part to contact inner city area residents at night. Paul Delaney "Census Millions Missed," *N.Y. Times*, Apr. 29, 1973, Sect. IV, at 3. The lack of Spanish speaking background enumerators to count their communities is discussed further in Chapter 6 *infra*.

tended to increase the possibility of an undercount of minority group persons.[150]

It appears that the problems of persons of Spanish speaking background were not taken into sufficient consideration in developing the most appropriate data collection techniques.[151] For example, there are a number of areas in the Southwest where persons of Spanish speaking background live in substandard housing to which mail is not delivered.[152] Migrant farm workers, of which a significant portion are Mexican Americans, do not generally reside in any one location long enough to establish a mailing address. Similarly, mail delivery is often poor in inner city ghettos. These places would tend to be missed by the address registers. Moreover, many respondents needed the assistance which would have been provided by door-to-door enumerators had the conventional procedures been used.[153]

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[150] See Census Hearings, supra note 3, at 37; West End Neighborhood Corp. v. Stans, supra note 144; Quon v. Stans, supra note 142; and Plaintiffs' Complaint for Injunctive and Declaratory Relief (Civil Rights) at 3, Confederacion de la Raza Unida v. Brown, 345 F. Supp. 909 (N.D. Cal. 1972).

[151] The mailing list was developed through many vehicles, including property tax records, building permits, canvasses, post office checks and telephone directories.

[152] Interview with Drs. Leobardo Estrada, Department of Sociology, North Texas State University, and Jose Hernandez, Department of Sociology, University of Arizona, Sept. 21, 1973, in Washington, D.C.

[153] Statement by Whitney M. Young, Jr., late executive director of the National Urban League, D.C., Report on the Accuracy of the 1970 Census Enumeration, December 1970. See also the study conducted by Action for Boston Community Development, Inc., pp. 52-54, supra.

BILINGUAL OR SPANISH QUESTIONNAIRES

The Bureau of the Census did not provide a Spanish or bilingual questionnaire for any of its respondents to complete in the 1970 census. In those areas with large concentrations of persons of Spanish speaking background, the Bureau of the Census made sample questionnaires available in Spanish. Instructional materials also were provided in Spanish.[154] These aids were available through the census assistance centers and such other locations as post offices and community organizations.[155] In certain areas,[156] the instructional materials were mailed to the respondent with the official census questionnaire. A Spanish questionnaire, however, was used for the census of Puerto Rico.[157]

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[154] Questionnaires and instruction sheets were also translated into Chinese.

[155] U.S. Bureau of the Census, *supra* note 4. The Bureau states that in selected areas, where many of the residents speak and read Spanish, sample questionnaire and the the Spanish instruction sheet were mailed with the English questionnaires. The Commission has been unable to document that the Spanish sample questionnaire was mailed to respondents. A request was made to the Bureau for a list of the areas in which the Spanish sample questionnaire and instruction sheets were mailed to respondents. The Bureau only provided a list of areas in which the instruction sheets were mailed (see note 156, *infra*). A telephone interview with Dr. David Alvirez, Department of Behavioral Science, Pan American University, Feb. 5, 1974 (see *supra* note 44) corroborates Commission staff belief that Census Bureau procedures did not include the mailing of a Spanish sample questionnaire to respondents.

One of the criticisms voiced by Mexican American and Puerto Rican leaders and organizations against the Bureau of the Census was the lack of either a bilingual or a Spanish questionnaire[158/] for those Spanish speaking persons, often living in heavily Spanish speaking communities, who were not sufficiently conversant in English to fill out the 1970 census questionnaire properly. Not only the Bureau's count of the number of persons of Spanish origin but also its tabulation of their characteristics, including employment, housing, and education, may be in error because of the possibility that Spanish speaking persons filled out their 1970 census questionnaires inaccurately as a result of misunderstanding the questions asked.

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[156] According to the Bureau, of the 212 temporary census district offices set up across the country for the mailout/mailback system, only 14 offices automatically included a "Spanish-language version of the instruction sheet" with the census questionnaire envelope. The 14 district offices were: Los Angeles (1); Miami (1); New York--Bronx (2), Brooklyn (4), and Manhattan (4); Phoenix (1); and San Antonio (1). The Bureau further states that: "The selection of those offices was made on the basis of the relative concentration of Spanish speaking persons in the area covered by a district office as determined from the best data available in 1969; namely, 1960 census statistics updated by current local information. In total, of the approximately 43 million addresses covered by the mail-out/mail-back system, about 2.5 million received a Spanish-language instruction sheet in their questionnaire envelopes." Letter from Emma Moreno, community relations specialist, U.S. Bureau of the Census, to Jaime Taronji, equal opportunity specialist, U.S. Commission on Civil Rights, Jan. 22, 1974. The Bureau's efforts, thus, were not directed to a number of key areas with large Spanish speaking background populations, such as Albuquerque, San Diego, Denver, and Chicago.

[157] U.S. Bureau of the Census, supra note 4, at 66-74 and 84-104.

The Bureau, however, was unable to assess the extent of this problem. Although it could, in many instances, determine when a questionnaire was not received from a household, it could not tell whether the questionnaires it received were totally accurate.[159/]

158/ On a bilingual questionnaire, each question would be phrased in both Spanish and English. The questionnaire could be used nationwide or only in areas of high concentrations of Spanish speaking persons. An acceptable alternative to a nationwide bilingual census questionnaire would be a Spanish questionnaire such as the one used for the 1970 enumeration of Puerto Rico or the Spanish sample questionnaire used in the continental United States. A bilingual or Spanish questionnaire could be designed so that the answers would be located identically with the English forms and could be read by the Bureau's optical scanning equipment for rapid tabulation by the Bureau's computers.

159/ 1970 census questionnaires which, on their face, were logical and consistent were accepted by the Bureau. Followup interviews were not conducted on such questionnaires. Enumerators conducted followup interviews only of persons who failed to return a census questionnaire, omitted an answer or provided patently inconsistent answers; e.g., an individual responding that he/she had a 7 year-old daughter and later responding that the daughter was widowed.

Bureau of the Census officials stated that the insistence by Spanish speaking organizations on a bilingual questionnaire is based on ethnic pride rather than a legitimate need for such census questionnaires.[160] They also contended that those Spanish speakers who are not sufficiently literate in English to read, understand, and fill out an English questionnaire often are insufficiently conversant in Spanish to enable them to fill out a Spanish questionnaire. Even the small amount of data the Bureau has gathered on Spanish literacy does not support this argument.[161]

The Bureau obviously recognized the need to provide assistance to non-English-speaking populations when it spent thousands of Federal dollars on producing sample questionnaires and instruction sheets in Spanish for the 1970 census.[162] Those Spanish speakers who benefited from such aids also would have found it helpful if the regular questionnaire they had been given for completion were bilingual or in Spanish.

Moreover, the Bureau's argument shows an insensitivity to the problems of persons of Spanish speaking background. First and second generation immigrants from Spanish speaking countries generally are better able to read,

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160/ Levine interview, supra note 28. The Bureau contends that its officials were misquoted by Commission staff. Bureau of the Census response, supra note 29 at 10-11. A review of the meeting notes by Commission staff substantiates the comments attributed to Bureau officials.

161/ No data on Spanish literacy were collected in the 1970 census. The November 1969 Current Population Survey showed that of 5,069,000 persons reporting Spanish mother tongue, 994,000 (almost 20 percent) read and write only Spanish.

162/ The Bureau also produced a few bilingual and Spanish reports and pamphlets. For example, U.S. Bureau of the Census, Department of Commerce, Nosotros (June 1973) and PC (SI)-30, 1970 Census of Population: Personas de Descendencia Hispana (1973).

write, and speak Spanish than they are at reading, writing, and speaking English.[163/] The Bureau of the Census, however, does not collect data on the number of persons whose primary language is Spanish, i.e., the principal language presently spoken in the home, or on the number who can read and write only Spanish.[164/] Thus, census statistics cannot be used to support or refute the Bureau's argument that there is no legitimate need for a Spanish or bilingual census questionnaire.

Bureau officials also cite technical difficulties as a reason for not using bilingual or Spanish questionnaires. For example, they anticipate extra cost for mailing two forms to every recipient.[165/] They also contend that a single Spanish or bilingual questionnaire could not be developed for both Puerto Ricans and Mexican Americans because of differences in vocabulary and usage. This position appears to be contrary to Bureau practice since the Bureau has prepared materials in Spanish for nationwide distribution to both Mexican Americans and Puertc Ricans.

[163/] A study conducted in Boston showed that only 25 percent of the Puerto Ricans there were literate in English, while 60 percent were literate in Spanish. Action for Boston Community Development, Inc., *supra* note 136.

[164/] Section on "Spanish Language" p. 75 *infra*.

[165/] Levine interview, *supra* note 28. Mailing a Spanish questionnaire to recipients in areas with a high concentration of persons of Spanish origin would not obviate the need for also distributing an English questionnaire. The Bureau would not know in advance which questionnaire would be used by any one household.

The methodological problems, in fact, do not appear to be insurmountable. For example, the Dominion of Canada used both English and French questionnaires for the first time in its 1971 Decennial Census.[166] Further, the Bureau of the Census has ample time between now and the 1980 census to draft and field test a nationwide bilingual or Spanish census questionnaire and, indeed, has committed itself to study the feasibility of such a form. As the Director of the Census stated at his Senate confirmation hearing:

> In its planning and preparatory work over the next few years for the 1980 Census, the Bureau will give high priority to determine needs and approaches to developing a Spanish or bilingual questionnaire. The Bureau will review the problems and opportunities with Spanish speaking groups, and undertake field and processing experimentation. The Bureau will also undertake intensive discussions with the census officials of Statistics Canada to draw upon the experience of the 1971 Canadian Census.... [167]

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[166] In 1969, the Dominion of Canada officially was declared a bilingual country. French Canadians comprise 27 percent of the total population. In the 1971 Decennial Census, two questionnaires were provided for use by the respondent--one in English and one in French. The Canadian Government has determined that use of a French form was successful and anticipates using a bilingual (English-French) questionnaire in the 1981 Census. Mailback questionnaires first were used in the 1971 census. Prior to this, census takers asked respondents the questions and completed the forms. In areas of large concentrations of French Canadians, bilingual census takers were used. Telephone interview with K. A. H. Devon, questionnaire coordinator, Census Fields, Statistics Canada, Feb. 4, 1974. French Canadians consider the bilingual assistance--a French questionnaire and bilingual enumerators--provided by Statistics Canada for the Canadian Census to have been essential. Without this help, it is thought that French speaking persons would have refused to answer them. Telephone interview with Pierre Jasmin, vice president and legal counsel, La Ligue des Droites de l'Homme (the League of Human Rights), Quebec, Canada, Feb. 8, 1974.

[167] Barabba Confirmation Hearing, *supra* note 110.

METHODS OF IDENTIFYING PERSONS OF SPANISH SPEAKING BACKGROUND

In order to conduct the 1970 census, the Bureau used three forms:

> (1) short-form questionnaire (80 percent of the households) which requested the basic set of questions such as name, age, race, and year of birth for all members of the household, and other information, such as the number of rooms and facilities available in the housing unit.
>
> (2) 15 percent long-form questionnaire (15 percent of the households) which requested, in addition to the basic set of questions, information on such topics as employment, education, income, and selected housing items.
>
> (3) 5 percent long-form questionnaire (5 percent of the households) which requested, in addition to the basic set of questions, information on some of the sample topics in the 15-percent form and on such other subjects as vocational training, marital history, and work disability. 168/

The procedures used by the Bureau were to assign one of the three forms

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168/ The Bureau treated these questions as least important. They included such inquiries as whether or not there was a dishwasher in the home or whether the respondent was of Spanish origin. The Bureau states that:

> The Bureau did not consider the 5 percent sample questions the least important. The unique questions included on the 5-percent questionnaires were questions on marital history, citizenship, year of immigration, Spanish origin or descent, vocational training, and disability. The questions all are vitally important. In addition, questions were included asking for age, race, sex, marital status, place of birth, educational attainment, occupation, industry, income, among others. It is not a question of relative importance as to whether an item is collected on a 100-, 20-, or 5-percent basis. Rather it is a question of how the data are to be used in terms of geographic presentation and cross-tabulations. Any item which appears on a census form is considered important or it would not be there. Bureau of the Census response, *supra* note 29, at 11.

to each household on a random basis.[169/]

A measure of the Spanish speaking background population was not made on the basic census questionnaire. In the 15 percent sample survey, the Bureau had four indirect means of tabulating the number of persons of Spanish speaking background.[170/] The only direct measure of this group was contained in the 5 percent sample survey.[171/]

[169/] In the mailout/mailback approach, each address was designated by a computer to receive either the short questionnaire or one of the two longer questionnaires (the census questionnaire plus either the 15 percent or the 5 percent sample survey questionnaire). Under the conventional procedure, when the enumerator visited a household designated to answer the 5 or 15 percent sample questionnaire, the enumerator asked the additional sample questions before concluding the interview. Where conventional enumeration techniques were used, there was some possiblity that bias against persons of Spanish speaking background and other racial/ethnic minorities could be introduced; e.g., English-speaking enumerators may have tried to avoid the difficult task of administering long forms to Spanish speaking families. Interview with Richard Burt, Chief of the Field Division, and Emma Moreno, community relations specialist, Bureau of the Census, Aug. 20, 1973.

[170/] These indirect measures (such as birthplace, surname, and language) are relatively objective, which may be an advantage in the case of respondents who do not wish to identify themselves as minority group members. But none of these measures is correlated sufficiently well with Spanish origin group membership to be used alone to identify such membership. It is important to collect and tabulate these data, nonetheless, as they help describe the characteristics of the Spanish origin population.

[171/] The Bureau notes that although this measure is direct, it is subjective. Bureau of the Census response, supra note 29, at 12. Nonetheless, the Commission has long recommended self-identification of race/ethnic origin. See U.S. Commission on Civil Rights, To Know or Not to Know: Collection and Use of Racial and Ethnic Data in Federal Assistance Programs (1973).

Indirect Measures

Spanish Birth or Parentage

Information about birth or parentage traditionally is used by the Bureau of the Census to identify first and second generation immigrants. For the 1970 census, a birth or parentage question was included in the 15 percent sample survey.[172] As part of its overall tabulations on country of origin for the foreign stock, the Bureau of the Census tabulated those individuals responding that they were born in Puerto Rico, Mexico, Cuba, or another Spanish speaking country or had one or both parents who were born there.

While data on birth or parentage are clearly important in determining the growth of the Spanish speaking background population in this country, they are a poor substitute for data on all generations. Discrimination against persons of Spanish speaking background is not restricted to any one generation and to use a count of first and second generation immigrants as a measure of the total Spanish speaking background population would result in an underestimation of the size of that group and its problems. As shown in Table II (page 70), the Bureau of the Census counts only about 5 million persons of Spanish birth or parentage in this country, as opposed to over 9 million persons who identify themselves as being of Spanish origin.[173]

172/ Respondents were asked to list their place of birth, that of their mother, and that of their father, by indicating "Name of State or foreign country; or Puerto Rico, Guam, etc."

173/ Table II also shows that the number of persons of Puerto Rican and Mexican American birth or parentage is smaller than those who identify themselves as being Puerto Rican or Mexican American. More persons report their birthplace or parents' birthplace as Cuba, however, than report that they are of Cuban origin.

TABLE II

A Comparison of the Results of Several Measures in the 1970 Census of Persons of Spanish Speaking Background in the United States

	Birth or Parentage	Origin
Puerto Rican	1,379,043	1,429,664
Mexican American	2,339,151	4,532,552
Cuban	560,628	544,627

	Total Spanish Speaking Background
Birth or Parentage	5,241,892
Origin	9,073,892
Language	9,589,216
Heritage	9,294,509[a]

Source: U.S. Bureau of the Census, Department of Commerce, PC (SI)-30, 1970 Census of Population: Persons of Spanish Ancestry (Feb. 1973).

[a] U.S. Bureau of the Census, Department of Commerce, PC(1)-C1, 1970 Census of Population: General Social and Economic Characteristics--United States Summary, Table 85 at 380 (June 1972).

Nonetheless, the Bureau considered this measure to be the best one it had on the 15 percent sample for determining the size of the Puerto Rican population in the East.[174/] Thus, despite their drawbacks, birth or parentage data from the 1970 census were used for official census population totals for persons of Spanish speaking background in the East. For instance, the preliminary population totals released by the Bureau of the Census on the New York, New Jersey, and Pennsylvania Puerto Rican populations were based on Puerto Rican birth or parentage. Moreover, the Bureau of the Census, when announcing these totals, failed to specify that the data upon which they were based were limited to first and second generation Puerto Ricans,[175/] excluding Puerto Ricans of third

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[174/] The surname count could not be used to identify Puerto Ricans because it was not conducted in the East. The count of persons of Spanish language also could not be used to identify Puerto Ricans in the East as large numbers of Central and South Americans in that area were included in that count.

[175/] First generation Puerto Ricans are persons born in Puerto Rico and are recorded by the Bureau as being of Puerto Rican birth. Second generation Puerto Ricans are persons born on the mainland with one or both parents having been born in Puerto Rico and are recorded by the Bureau as being of Puerto Rican parentage. U.S. Bureau of the Census, Department of Commerce, Press Release, "U.S. Puerto Rican Population Put at 1,379,043 in Preliminary 1970 Census Totals," May 23, 1973. The title of the release clearly implies a population count. Admittedly, the text of the release indicates that totals released were "birth or parentage" totals. The press release, however, did not make clear that the Bureau's use of the term "Puerto Rican parentage" meant having parents born in Puerto Rico and not merely parents who were Puerto Rican. Similarly, in 1972 the Bureau had reported "Puerto Rican counts" for New York, New Jersey, and Pennsylvania which made no indication that the "Puerto Rican counts" were of persons of Puerto Rican birth or parentage. U.S. Department of Commerce, Press Release, "Note to Correspondents," Mar. 9, 1972. This "Note to Correspondents" reported the New York "Puerto Rican count" at 872,471. In its official publication of population totals for New York, persons of Puerto Rican birth or parentage were reported as 872,471--identical to the previous "Puerto Rican count." U.S. Bureau of the Census, Department of Commerce, PC(1)-C34, 1970 Census of Population: General Social and Economic Characteristics--New York, at Table 49 (May 1972) and subsequent generations.[176] Puerto Rican leaders in New York, unaware that the Puerto Rican population totals were limited solely to first and second generation Puerto Ricans, were provided the first major impetus for a public outcry of "undercount" in the 1970 census.[177] The Bureau of the Census' later release of the Puerto Rican origin population total for New York City[178] only compounded this confusion because of the uncertainty as to which would be the official census total--the Puerto Rican birth or parentage total or the Puerto Rican origin total.[179]

Spanish Surname

The Bureau's Spanish surname data were obtained by manually tabulating some of the census questionnaires and comparing the surnames to those on its Spanish surname list.[180] The manual tabulation of census questionnaires obviously is costly,[181] so the Bureau confined the manual tabulation of Spanish surnames to those 15 and 5 percent questionnaires from the five southwestern States of Arizona, California, Colorado, New Mexico, and Texas.[182] The Spanish surname count for that area is shown in Table III (page 74).

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[176] The Bureau did not publish the Puerto Rican origin data (a 5 percent sample item) until after it had tabulated and published the data on persons of Puerto Rican birth or parentage (a 15 percent sample item).

[177] Edward C. Burks, "Puerto Ricans Say Census Cuts Political Power Here." *N.Y. Times*, Oct. 2, 1972.

[178] See Table III, p. 74, *infra*.

[179] The Bureau states that it "...does not recognize any of the different figures as the 'official census total.'" Bureau of the Census response, *supra* note 29, at 12. Ironically, this lack of a single Puerto Rican total has been the source of much confusion on the part of the users of census data.

[180] The Bureau of the Census has accumulated a list with over 8,000 Spanish surnames. The original list was compiled by the INS and later expanded by the Bureau.

A Spanish surname count produces exactly what its name implies; i.e., a count of persons with Spanish surnames. It is not accurate to say that a surname count is equivalent to a count of persons of Spanish speaking background. This count excludes persons of Spanish speaking background who do not have surnames which are on the Bureau of the Census' list[183] and includes non-Spanish speaking background persons who have Spanish surnames.[184]

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[181] Some demographers have advocated the use of computers for rapid and less costly coding of Spanish surnames. Robert W. Buechley, "A Reproducible Method of Counting Persons of Spanish Surnames," *Journal of the American Statistical Association* (No. 56, 1961). The census forms were not designed for computer processing of surnames.

[182] This region has the greatest concentration of persons of Spanish speaking background and the lowest concentration of other ethnic groups with Spanish-sounding surnames.

[183] For example, some Chileans, Argentinians, and Puerto Ricans have English and European-sounding surnames; e.g., Richards, Colberg, and Bird, which are not on the Census Bureau's list. Also, women with Spanish surnames who marry men with non-Spanish surnames, as well as their children, are not identified under this procedure.

[184] For instance, some surnames on the Bureau's list, such as Leon or Fal are common to other racial or ethnic groups. Alvarez and Hernandez also are common surnames of Pilipinos, who are classified by the Bureau as Asiar Americans. Non-Spanish surnamed women marrying Spanish surnamed men will b included falsely in the count.

TABLE III

A Comparison of the Results of Several Measures of Persons of Spanish Speaking Background for Selected Geographic Areas

	Puerto Rican Birth or Parentage	Puerto Rican Origin
New York City	811,843	846,731

	Spanish Surname	Spanish Language	Spanish Heritage[a]	Spanish Origin	Mexican Origin
Ariz.	211,585	306,609	333,349	265,006	240,025
Cal.	2,222,185	2,738,513	3,101,589	2,368,748	1,856,841
Colo.	245,390	255,994	286,467	255,506	103,584
N.M.	324,248	379,723	407,286	308,340	119,049
Tex.	1,663,567	1,981,861	2,059,671	1,840,862	1,619,252

	Cuban Birth of Parentage	Cuban Origin
City of Miami	122,837	126,723
Miami, SMSA	217,892	218,754

Source: U.S. Bureau of the Census, Department of Commerce, PC(SI)-30, 1970 Census of Population: Spanish Ancestry (Feb. 1973).

[a] The PC(1)-C, General Social and Economic Characteristics, for each State, Table 49.

Spanish surname data, nonetheless, are important. They have been tabulated for three decennial censuses,[185/] and they are a consistent means by which changes over time in the Mexican American population in the Southwest can be measured. Further, census data on Spanish surnames can be used in comparison with other sources. For example, a census surname count is the only measure used by the Bureau of the Census which can be compared with tabulated, but unpublished, vital statistics on persons of Spanish surname collected in the five southwestern States.[186/] Another advantage of using Spanish surnames is that they can assist in identifying persons of Spanish background who do not identify with census categories such as Mexican American.[187/]

Spanish Language

In the 15 percent sample survey used in the 1970 census, all persons were asked "What language, other than English, was spoken in this person's

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[185/] U.S. Bureau of the Census, *supra* note 102, at VI. Surname data also are available from the 1950 and 1960 censuses.

[186/] These vital statistics on Spanish surnames could be used as a basis for estimating the rate of undercount for persons of Spanish surname in the southwestern States. See *supra* note 101.

[187/] For example, in New Mexico many persons of Spanish speaking background prefer to be called Spanish Americans rather than Mexican Americans. The 1970 census had no "Spanish American" category. That census revealed only 119,049 persons in New Mexico who identified themselves as of Mexican origin. In contrast, 188,796 persons in New Mexico identified themselves as "other Spanish," and a surname count revealed a total of 342,248 Spanish surnamed persons in the State.

house when he [or she] was a child?"[188] Where there was an answer of Spanish for either the household head or the wife, all members of the current household were counted as members of the Spanish language group regardless of whether, in fact, they spoke Spanish.

Clearly this count is not an accurate measure of the Spanish origin population in the country. It included some persons who did not consider themselves to be of Spanish origin,[189] and it included a large number of individuals whose mother tongue was not Spanish.[190] Finally, even a tabulation of persons whose "mother tongue" is Spanish is not a good substitute for a count of persons whose primary language is Spanish. A true count of those persons in the United States whose primary language is Spanish is important to Federal, State, and local agencies concerned with bilingual/bicultural education programs and other services to the Spanish speaking community and to the Bureau of the Census, itself, in determining the need for bilingual census forms.[191] The 1970 census Spanish language count, however, does not fill this need.

188/ The respondent was asked to check one of the following: "Spanish," "French," "German," "other," or "None, English only." In addition, totals were computed separately of household heads and spouses reporting Spanish as the mother tongue and of other members of their household.

189/ As shown in Table II, supra, according to the 1970 census there were 9,589,216 persons of Spanish language in the country and 9,073,237 persons of Spanish origin.

190/ For example, under this Spanish language count, if a Spanish speaker married a non-Spanish speaker who had children from a previous marriage, all members of that household would be tabulated under the Spanish language count.

191/ See Lau v. Nichols, supra note 75 for a discussion of the Supreme Court decision that recipients of Federal financial assistance who provided inadequate English instruction in areas with large concentrations of non-English-speaking students violated Title VI of the Civil Rights Act of 1964.

Spanish Heritage

The Bureau published the results of the questions asked of all respondents before it published those which were asked of only the 15 and 5 percent samples.[192] Moreover, the results of the 15 percent questionnaire[193] would be useful in estimating the country's entire Spanish speaking background population.[194]

The Bureau thus devised a count which combined all three of the 15 percent sample measures relating to this population to arrive at an estimate of the total number of persons of "Spanish heritage": (1) for the five southwestern States, persons of Spanish language and persons who are not of Spanish language but who have Spanish surnames; (2) for the three mid-Atlantic States (Pennsylvania, New Jersey, and New York),

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192/ Final population counts by race were released in October 1971. See U.S. Bureau of the Census, Department of Commerce, Press Release, "Final 1970 Population Counts by Race Announced by Census Bureau," Oct. 20, 1971.

193/ Spanish origin data were tabulated from the 5 percent sample survey. The Spanish origin self-identification method used by the Bureau of the Census in the 1970 census is discussed further in the next section.

194/ The Spanish language question probably was the least valid of all measures used to estimate the Spanish speaking background population. The birth or parentage question had some validity in describing the Puerto Rican population, but not for describing the Mexican American population, most of whom have origins in this country for more than two generations. The surname count was applied only in the Southwest and thus was not useful as a nationwide measure.

Puerto Rican birth or parentage;[195] and (3) for the remaining 42 States and the District of Columbia, Spanish language.[196]

The results of the Spanish heritage measures were available for each State prior to the release of the more detailed tabulations of Spanish origin--Mexican origin, Puerto Rican origin, etc., from the 5 percent sample data.[197]

195/ The significant non-Puerto Rican Spanish speaking background communities in New York, New Jersey, and Pennsylvania were excluded from this count. For example, more than 400,000 of the 1,352,302 persons of Spanish origin in New York State are not of Puerto Rican birth or parentage. U.S. Bureau of the Census, *supra* note 134, Table 1 at 1.

196/ U.S. Bureau of the Census, Department of Commerce, "Definitions of Spanish Heritage and Spanish Origin," statement prepared by E. Seralle, P. Berman, and N. McKennay for distribution to persons preparing Volume II reports, May 9, 1972.

197/ U.S. Bureau of the Census, Department of Commerce, Press Release, "Note to Correspondents," May 9, 1972. The total Spanish heritage population in the United States was 9,294,509. U.S. Bureau of the Census, Department of Commerce, PC(1)-C1, *1970 Census of Population: General Social and Economic Characteristics--United States Summary*, Table 85 at 380 (June 1972).

Not only were the components of this measure imprecise, but the publication of the Spanish heritage data also created futher confusion[198] because the Spanish heritage data were released under the general classification of "Spanish language,"[199] presumably because Spanish language was the major component in tabulating Spanish heritage.[200]

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[198] The Bureau has taken only limited steps to clear up this confusion. In November 1972, it issued a press release which defined four identifiers from which data were tabulated (Spanish origin, Spanish surname, Spanish language, and Spanish birth and parentage). U.S. Bureau of the Census, Department of Commerce, Press Release, "Note to Correspondents: The Spanish Heritage Population in the 1970 Census," Nov. 1972. See also PC(SI)-30. Persons of Spanish Ancestry, supra note 134, which defines the identifiers and describes samples from which they were drawn. The Bureau never published a report written by its consultants to clarify its collection and publication of Spanish speaking background data. Estrada report, supra note 13. It was written in 1972 for the Bureau's use by three Spanish speaking demographers. Excerpts from this report relating to Mexican Americans are published in Social Science Quarterly, supra note 17. The authors had a commitment from the former Associate Director for Demographic Fields, Conrad Tauber, that their report would be published by the Bureau. After Dr. Tauber retired, the Bureau's plans to publish the report were tabled. Interview with Drs. Leobardo Estrado, Department of Sociology, North Texas State University, and Jose Hernandez, Department of Sociology, University of Arizona, Sept. 21, 1973, in Washington, D.C.

[199] In defining the Spanish language population, the Bureau uses the identical elements it has used for the Spanish heritage population. The Bureau of the Census states that:

> "Census identification of the Spanish language population is based on the following: (1) Persons reporting Spanish as a mother tongue. (2) Persons in a household related to the head or wife (one of whom reported Spanish mother tongue). (3) Persons of Spanish surname in the five Southwestern States (Arizona, California, Colorado, New Mexico, and Texas) who are not included in 1 and 2 above. (4) Persons in the Middle Atlantic States (New Jersey, New York, and Pennsylvania) of Puerto Rican birth or parentage." U.S. Bureau of the Census, Department of Commerce, Data on Spanish Speaking--origin--language--surname--1970 Census, staff report, Oct. 11, 1972.

In a letter to the Commission's Staff Director, the former Director of the Census appeared to deny this confusion: "The count of persons of Spanish language is just what the text describes, the number of persons who report that Spanish was spoken in their homes in early childhood. If the head or spouse reported Spanish, all members of the family were included." Brown letter, supra note 31.

Direct Measure (Spanish Origin)

The most direct method of identifying the Spanish speaking background population in the United States is the Spanish origin question used by the Bureau of the Census in the 1970 census. The Spanish origin question never had been used in any previous decennial census.[201] This question asked respondents to identify themselves and each member of their household as being of Mexican, Puerto Rican, Cuban, South or Central American, other Spanish origin, or none of these.[202]

Self-identification is preferable to indirect methods for identifying the United States population of Spanish speaking background. It includes persons who are of Spanish speaking background but may be missed by other measures of this group; for example, those who (1) do not have Spanish surnames; (2) did not come from a household where Spanish was spoken in their childhood; or (3) are of third or subsequent generations.

200/ See, for example, U.S. Bureau of the Census, Department of Commerce, PC(1)-C15, 1970 Census of Population: General Social and Economic Characteristics: Illinois (Apr. 1972). The Table of Contents shows that data on the population of Spanish Heritage can be found in Tables 96-101 (for areas and places of 50,000 or more), Tables 112-116 (for places of 10,000 to 50,000), and Tables 129-133 (for counties). Nonetheless, the Tables are entitled "...Pers[illegible]of Spanish Language...."

201/ A version of this q[illegible]on was first used by the Bureau of the Census in the November 1969 Current Population Survey.

202/ A similar process was used in the "color or race" question on the 1970 census questionnaire, discussed in this chapter at p. 84, infra.

In an analysis of the Bureau's methodology and data collection procedures in December 1972, Commission staff recommended that Spanish origin be used as the measure to identify persons of Spanish speaking background.[203/] The former Director of the Census, George Hay Brown, responded[204/] that the Bureau of the Census used various approaches in the 1970 census to identify persons of Spanish speaking background because there was no consensus by social demographers as to which was the most appropriate method.

The Bureau's Special Assistant to the Chief of the Population Division worked with three Spanish origin demographers[205/] on studying the possibilities for the most effective standardized method of defining the Spanish origin population in the United States. The demographers recommended to the Bureau in 1972 that self-identification of Spanish origin be the standard method to define that population for the purpose of census tabulation.[206/]

[203/] Buggs letter, supra note 30. Among other things, the letter criticized the Bureau of the Census for having too few community education specialist and bilingual enumerators, unavailability of bilingual or Spanish questionnaires, use of the mailout/mailback method in hard-to-enumerate areas, and the confusion of using five different population totals for persons of Spanish speaking background.

[204/] Brown letter, supra note 31.

[205/] These three demographers comprise the committee assisting the Bureau of the Census on persons of Spanish origin. See supra note 44.

[206/] Self-identification was recommended as the preferred way to obtain separate information on each major group (Puerto Rican, Cuban, etc.) for as many geographic divisions as permitted by the usual technical limitations. Estrada report, supra note 13.

The use of Spanish origin as the method of identifying the Spanish speaking background population in the United States does not exclude the need to continue the collection of birth and parentage, surname, and mother tongue data on a sample basis. On the contrary, continued collection of such data is necessary to identify and tabulate the characteristics of persons of Spanish speaking background.

The Bureau's use of a Spanish origin question as a method of identifying persons of Spanish speaking background had limitations, however. Some of the problems which must be solved before the Bureau of the Census can use the Spanish origin method of identification to its fullest potential are discussed briefly below:

Question Wording

Persons can perceive themselves as belonging to a certain population group, but they might not identify with the words or phrases used in a survey questionnaire to designate that population group. That is, there is a difference between how people identify themselves and what they prefer to be called. For example, the vast majority of Mexican Americans are several generations removed from their immigrant or second generation ancestors who resided in the Southwest. Many do not identify with the Republic of Mexico and, therefore, do not identify with "Mexican" origin or descent. Some Mexican Americans in California and New Mexico prefer to be called "Californios" or "Hispanos." In other southwestern States, they consider themselves to be an almost distinct ethnic group and use various terms to identify themselves: Spanish speaking Americans of Mexican descent, Americans of Spanish heritage, Latin Americans, Spanish Americans, Mexicanos, Mexican Americans, Chicanos, etc.[207/]

This should not be an insurmountable problem for the Bureau of the Census. Through survey sampling, the Bureau can determine the preferable teminology to be used so that the greatest number of people will identify with that classification.[208/] In addition, an alternate terminology could be provided on the form itself.[209/]

The question of classification is less of a problem with Puerto Ricans, Cubans, and other persons of Spanish speaking background from Central and South America and the Caribbean who are predominantly of first or second generation, since they tend to identify more with their homeland, than do those persons of Mexican background.

207/ Id.

208/ After completion of the 1970 census, the Bureau conducted a sample survey in the Southwest to determine what Mexican Americans preferred to be called. The respondents could choose from such designations as Mexican, Mexicano, Mexican American, and Chicano. The overwhelming choice was Mexican American.

209/ This technique was used in the 1970 question on color or race. One option provided in that question was "Negro or Black."

Color or Race

In the 1970 census, respondents were asked to identify the "Color or Race" of each member of their household from the following categories: "white," "Negro or Black," "Indian (American)," "Japanese," "Chinese," "Filipino," "Hawaiian," "Korean," or "other."[210] The "Color or Race" question was used on 100 percent of the questionnaires. Neither this question nor any other provided on 100 percent of the questionnaires gave opportunity for persons of Spanish speaking background to so identify themselves.

As of early 1973, the Bureau of the Census was considering altering the "Color or Race" question in the 1980 census to include a classification for persons of Spanish speaking background;[211] but, as of January 1974,[212] it had not yet determined that such a change would be made.[213] One reason for the Bureau's hestiation has been that persons of Spanish speaking background are not a separate racial group.[214] However, the Bureau of the

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[210] In Alaska, the categories "Aleut" and "Eskimo" were used instead of "Hawaiian" and "Korean." U.S. Bureau of the Census, supra note 4.

[211] Brown letter, supra note 31.

[212] Telephone interview with Edward Fernandez, Special Assistant to the Chief of the Population Division, U.S. Bureau of the Census, Jan. 15, 1974.

[213] Active planning for the 1980 census will begin in 1976 or 1977. Levine interview, supra note 28.

[214] Most people of Spanish speaking background are classified racially as "white" (only 1.5 or 2 percent identify themselves as black or Negro). One disadvantage of combining national origin with the "Race or Color" question is that data no longer would be available separately for white and black persons of Spanish origin. Currently, however, apart from the population totals of these classifications, little data are published. Data on housing, employment, and education are not. Further, although discrimination against some of the subclassifications, for example, black Puerto Ricans, may be more pervasive than against others, these subclassifications comprise only a fraction of one percent of the total U.S. population.

Census long has acknowledged the fact that not all its categories on the color or race question were strictly racial; i.e., some of the categories concerned national origin.[215] Many of the groups listed in that question, although nonwhite, are not in themselves racial groups. For example, Chinese and Japanese are members of the same race.

The Bureau of the Census might consider redesignating this question "National Population Groups,"[216] in order to expand the "Color or Race" question to include Spanish speaking background population groups for the separate enumeration of Mexican Americans, Puerto Ricans, Cubans, and South and Central Americans. If these groups are not included in an expanded "color or race" question as suggested above, it is important that a Spanish origin question be on 100 percent of the questionnaires. Data from 100 percent of the questionnaires are tabulated months and even years prior to the sample questions. Further, more detailed tabulations[217] and cross-tabulations[218] can be made of data obtained on these questionnaires.[219]

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[215] U.S. Bureau of the Census, Department of Commerce, PC(1)-1C, 1960 Census of Population: General Social and Economic Characteristics--United States Summary, at XII (1962).

[216] The Bureau thus could avoid criticism for listing Mexican Americans, Puerto Ricans, or Cubans as "race or color" groups. However, it appears some persons of Spanish speaking background apparently "misclassified" themselves as "other races" rather than white as expected by the Bureau in the 1970 Census. U.S. Bureau of the Census, supra note 2, at 9.

217/ Data from 100 percent of the questionnaires can be tabulated for a locality of any size. In contrast, data from sample surveys can be used for reliable estimates for the Nation, States, and large cities, but not for small cities. The smaller the total population and the smaller the sample size, the greater the probability that estimates of the total population will deviate significantly from its actual size. The Bureau published the Spanish origin data (from the 5 percent sample) for places of 10,000 or more. The Bureau notes that "Counts for persons of Spanish origin were tabulated at the enumeration district (and block group) level. Data were also tabulated for the Spanish origin population for census tract." Bureau of the Census response, *supra* note 28, at 13. Since the data are tabulated, but not published, any person desiring to obtain such data would have to purchase these tabulations from the Bureau.

218/ Items on the 5 and 15 percent sample survey can be cross-tabulated with items on the basic census questionnaire but not with each other. For example, the number of bedrooms in housing units where the head of the household is of Puerto Rican birth or parentage cannot be tabulated.

219/ For example, the PC(1)-A, *Number of Inhabitants*, reports contained only population totals and the PC(1)-B, *General Population Characteristics*, series contained data by race (100 percent item) but not on persons of Spanish speaking background. Nonetheless, the 1970 census produced more data on persons of Spanish speaking background than any previous census. For example, the PC(1)-C, *General Social and Economic Characteristics*, reports contained Spanish heritage data--Spanish language, Spanish surname (for the five southwestern States), and Puerto Rican birth or parentage (for New York, Pennsylvania, and New Jersey--and Spanish origin data. The PC(1)-D, *Detailed Characteristics*, series contained the same data as the PC(1)-C reports but in more detail and with far more cross-tabulations. From the 1970 census, the Bureau produced over 30 Subject Reports. Three of these relating to persons of Spanish speaking background were published in 1973: (1) *Persons of Spanish Origin* (PC(2)-1C); (2) *Persons of Spanish Surname* (PC(2)-ID); and (3) *Puerto Ricans in the United States* (PC(2)-1E). Data on persons of Spanish speaking background also are included with socioeconomic characteristics. Detailed population totals for the United States as a whole, regions, divisions, States, Standard Metropolitan Statistical Areas (SMSA's), and major cities are published in a supplementary report, *Persons of Spanish Ancestry* (PC(SI)-30).

Chapter 6

BUREAU OF THE CENSUS EMPLOYMENT

COMMUNITY EDUCATION SPECIALISTS

In order to improve its data collection techniques and to ensure full citizen cooperation for an accurate census count, the Bureau undertook a community education program in conjunction with the 1970 census. The purpose of this program was to improve its coverage of the traditionally hard-to-enumerate areas--minority and inner city communities.[220] It hired 18 community education specialists to explain the need for an accurate count and the benefits such a count would provide to the community, to seek community advice on data collection techniques in minority and low-income areas, to improve the public image of the Census Bureau and to stimulate the recruitment of minority census enumerators.[221]

Of the 18 community education specialists, five were native Spanish speakers. They were assigned to the data collection centers in New York City, Dallas, San Francisco, Los Angeles, and Denver and were responsible for the geographic area covered by their center. For example, the community education specialist assigned to the Dallas office was responsible for the States of Texas, Oklahoma, Arkansas,

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220/ U.S. Bureau of the Census, Department of Commerce, Press Release, "The Effect of Special Procedures to Improve Coverage in the 1970 Census," Apr. 1973.

221/ Estrada report, supra note 13.

and Louisiana.[222] The community education program clearly was inadequate to reduce effectively any undercount of minority groups.[223] Five persons were not sufficient to cover even the Bureau's count of 9 million persons of "Spanish origin." The House Subcommittee investigating the accuracy of the 1970 census noted the lack of a sufficient number of community education specialists in the 1970 census, and the Bureau of the Census acknowledges this. For the 1980 census, it intends to hire a greater number of Spanish speaking community education specialists.[224]

After the 1970 census, the community education program was discontinued with the expectation that it would not be used again until the 1980 census. However, in anticipation of either a mid-decade census

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222/ Telephone interview with Paul Squires, Associate Director for Data Collection and Processing, U.S. Bureau of the Census, Jan. 24, 1974.

223/ Census hearings, supra note 3, at 38.

224/ Id. and Brown letter, supra note 31.

or sample survey,[225] the Census Bureau reinstated a small community relations program on a trial basis.[226] Again, this program has been too small to have a significant effect.

CENSUS ENUMERATORS

One obvious means of increasing the Bureau's communication with the Spanish origin community is for the Bureau to hire persons of Spanish origin for all phases of the enumeration process. If the Bureau employed Mexican Americans, Puerto Ricans, and Cubans as enumerators, questionnaire and report writers, public relations specialists, planners, and policymakers, the entire census operation could be made more responsive to the needs of members of these groups.

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[225] The Bureau opposed the various bills introduced in Congress requiring a mid-decade census. H.R. 4426 (93rd Cong., 1st Sess.) was introduced, requiring a mid-decade sample survey of approximately 1 million households. The Bureau testified in favor of a mid-decade sample survey but stated that it believed it already had the authority for such a survey. The Bureau requested appropriations for a mid-decade sample survey, but the request was not favorably acted upon by the House Appropriations Subcommittee. The chances of a mid-decade sample survey in 1975 today are virtually nonexistent. As of January 1974, the bill was in the Rules Committee awaiting referral to the House for a vote. Telephone interview with Austin Bray, Jr., Assistant Counsel, Subcommittee on Census and Statistics, Committee on Post Office and Civil Service, U.S. House of Representatives, Jan. 15, 1974.

[226] In August 1973, the Bureau of the Census had three community relations specialists in the field--a black in Chicago, a black in Detroit and a Mexican American in Los Angeles. Only one specialist devotes full-time to community relations duties; the other two devote half-time to census data collection. The community relations program is coordinated by a Mexican American community relations specialist in Washington, D.C. The Bureau would like to expand the program to five specialists--adding a black specialist to the Philadelphia staff and a Spanish origin specialist to the New York staff. Telephone interview with Richard Burt, Chief of Field Operations, Bureau of the Census, Apr. 25, 1973 and interview with Richard Burt and Emma Moreno, community relations specialist, Aug. 20, 1973. As of January 1974, the Bureau had only two community relations specialists because the specialist in Los Angeles resigned. The Bureau was recruiting to fill the vacancy. Telephone interview with Emma Moreno, community relations specialist, Bureau of the Census, Jan. 16, 1974.

The Bureau's hiring practices, however, appear to have been extremely deficient. It has been alleged by a number of Puerto Rican and Mexican American organizations 227/ that there was an insufficient number of bilingual (English-Spanish) census enumerators to collect, edit, and follow up questionnaires from persons of Spanish speaking background. 228/ The Bureau of the Census, in fact, claims that it does not know how many of the 173,676 persons it hired as temporary

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227/ Confederacion de La Raza Unida v. Brown, 345 F. Supp. (N.D. Cal. 1973). See also, Census Hearings, supra note 3.

228/ In areas which were conventionally surveyed, the enumerators collected completed forms from each household. (See note 147 supra.) In all areas, enumerators were responsible for followup visits and telephone calls to obtain missing information, resolve obvious inconsistencies, and obtain questionnaires from nonresponding households.

enumerators for the 1970 census were of Spanish origin.[229/] This

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[229/] In their civil suit against the Bureau of the Census, Public Advocates, Inc., and the Mexican American Legal Defense and Educational Fund, representing the Mexican American Population Commission of California, requested information on the number of persons of Spanish speaking background hired as enumerators for the 1970 census. Defendants' Supplemental Response to Plaintiffs' First Set of Interrogatories, Confederacion de La Raza Unida v. Brown, supra note 227. See also, letter from Robert L. Gnaizda, attorney, Public Advocates, Inc., to Director, U.S. Civil Rights Commission, Mar. 7, 1973, enclosing a letter from Robert L. Gnaizda, attorney, Public Advocates, Inc., and Mario Obledo, executive director, Mexican American Legal Defense and Educational Fund, to Editor E.B. Duarte, HOY Magazine, Cabinet Committee on Opportunities for Spanish Speaking People, Mar. 2, 1973.

The Bureau states that:

> There is a count of the number of temporary employees who were from minority groups, although there are no separate figures for the Spanish speaking or other segments of minority employees. Bureau of the Census response, supra note 29, at 14.

The U.S. Civil Service Commission requires that agencies report annually their work force by sex, race, and ethnicity. The required racial and ethnic categories are: Negroes, Spanish-surnamed Americans, American Indians, Oriental Americans and all other employees (nonminorities). The Civil Service Commission as well as all other Federal agencies with responsibility for combatting employment discrimination, e.g., the Department of Justice, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance of the Department of Labor, consider the failure to separately identify employees of different racial and ethnic backgrounds to be culpable noncompliance with Federal laws and regulations.

The Bureau states that: "It was not then and still is not permissible to ask questions regarding religion, race, ethnic origin, etc., of applicants." Id. The Bureau's statement overlooks the possibility of visual identification. For example, the Civil Service Commission states that minority employment data can be collected without resorting to questioning the individual applicant or employee:

> Minority group designations are based on the visual observations of the supervisors, and their knowledge of what each employee considers himself or herself to be, or is regarded to be in the work environment or the community.

U.S. Civil Service Commission, Minority Group Employment in the Federal Government, Nov. 30, 1972. Further, with regard to applicants of Spanish speaking background, data could have been obtained from a review of the names appearing on the application forms.

failure in recordkeeping tends to indicate a lack of affirmative action for hiring persons of Spanish speaking background as well as other minorities. Agencies setting quantifiable goals and timetables for increasing minority employment generally keep records for measuring their progress.

Indeed, apart from the community relations specialists' efforts to locate minority enumerators, the Bureau did not make a special attempt to recruit Spanish speaking or other minority group enumerators. Rather, its focus in the recruitment process tended to exclude them.[230/]

[230/] Traditionally the Bureau has used a patronage system to hire its census enumerators. The Director of the Census, Vincent P. Barabba, stated that the Bureau "does accord preference in hiring to qualified persons referred by local Republican organizations." Letter from Vincent P. Barabba, Director, Bureau of the Census, U.S. Department of Commerce, to Hon. Les Aspin, U.S. House of Representatives, Aug. 13, 1973. A patronage system giving preference to Republicans tends to exclude potential Spanish speaking enumerators because the Spanish speaking community votes overwhelmingly, perhaps up to 90 percent, Democratic. Theodore H. White, The Making of the President--1972, at 148. See also Mark R. Levy and Michael S. Kramer, The Ethnic Factor: How America's Minorities Decide Elections, at 77-80 (1972). The Bureau states that:

> Every effort was made to recruit minority enumerators, clerks, crew leaders, and other supervisory personnel. Special attempts were made to recruit minority personnel through newspaper ads, contacts with community organizations, and other means. The Bureau recruited by every possible method, including radio and newspaper advertising, as well as publicity through community organizations. The recruitment process did not exclude minorities, but, in fact, employed numerous special techniques devised to attract them. Bureau of the Census response, *supra* note 29, at 14.

GENERAL EMPLOYMENT

The patterns of general employment at the Bureau are not encouraging. The Bureau comprises 83 percent of the Social and Economic Statistics Administration (SESA) at the Department of Commerce.[231] As of November 1972, SESA's permanent work force consisted of 5,432 employees, only 35 of whom (0.6 percent) were "Spanish Americans."[232] There were no permanent Federal employees of Spanish origin above the GS-14 level in SESA,[233] and only 10 were at the GS-11 to 14 level, less than 1 percent of SESA employment at that level.[234]

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[231] As of May 31, 1973, the total full-time civilian employment for SESA was 5,737. The Bureau of the Census comprised 4,744 of this total.

[232] The Bureau states that:

> SESA employment figures, as of November 1973, show the employment of 63 persons of Spanish origin. This is an increase from 35 persons the previous year. It is a percentage increase from .6 percent to 1.3 percent. Bureau of the Census response, supra note 29, at 14.

Separate employment statistics for Mexican Americans, Puerto Ricans, etc., are not maintained by SESA.

[233] Of the 184 GS-15's and above in SESA, there were no Spanish Americans, no Native Americans, 5 blacks, and 3 Asian Americans. SESA Minority Census of Full-time Civilian Employment, November 30, 1972. The November 1973 SESA employment figures indicated that there were still no persons of Spanish origin in grades 15 or above. Bureau of the Census response, supra note 29, at 14.

[234] SESA has 1,353 employees in grades 11 thru 14.

The affirmative action plan[235] for SESA for calendar year 1973 states that it will:

> Provide special minority recruitment and placement assistance (from both the Upward Mobility Program and outside recruitment sources) to the ... divisions in SESA which have less than 15 percent minority employment in those occupations with journeyman levels at the GS-11 level and higher. 236/

The plan calls for the allocation of "...at least 30 percent of the college recruitment effort to the recruitment of minority and female candidates...."[237] SESA's plan also calls for it to "make special recruitment and placement efforts to assist those elements of SESA which have less than 30 percent minority and 30 percent female."[238] Nonetheless, the plan did not contain an analysis to determine where SESA's deficiencies were; and it did not set specific goals and timetables for the recruitment, hiring, and upward mobility of Spanish

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235/ The SESA affirmative action plan was forwarded to all employees on Feb. 12, 1973, via a memorandum from Mr. Joseph R. Wrignt, Jr., Acting Administrator.

236/ U.S. Social and Economic Statistics Administration, Department of Commerce, Affirmative Action Plan for Calendar Year 1973.

237/ Id.

238/ Id.

origin or other minorities.[239]

A program specifically designed to recruit more persons of Spanish speaking background into the Federal civil service was announced by President Nixon on November 5, 1970.[240] This program, commonly referred to as the "Sixteen Point Program," sets out steps to be followed by the Federal Government to increase the employment of persons of Spanish speaking background. In order to implement the Sixteen Point Program, the actions which the Government must undertake include:

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[239] The Civil Service Commission (CSC) recommends that goals and timetables be established in problem areas where progress is recognized as necessary and where such goals and timetables will contribute to progress. U.S. Civil Service Commission, "Equal Employment Opportunity - Implementing the Spanish-speaking Program," FPM Letter No. 713-18, Jan. 23, 1973.

The Bureau states that:

> SESA's 1974 Affirmative Action Plan (not available at the time the draft report was written...) sets definite goals for adding members of minority groups to the staff of SESA. While separate goals are not established for those of Spanish origin, the listings of colleges, universities, and community organizations in the plan include a goodly number from which one would expect to get candidates of Spanish origin. Bureau of the Census response, *supra* note 29, at 15.

However, the Civil Service Commission considers the use of separate goals and timetables for each racial/ethnic group as an appropriate means to remedy underrepresentation or underutilization. U.S. Civil Service Commission Bulletin No. 713-25, July 31, 1972, at 8.

[240] White House Press Release, Nov. 5, 1970, reproduced in Civil Service Commission FPM Letter No. 713-18, *supra* note 239.

> An intensified drive to recruit Spanish surnamed persons, particularly for identified public contact positions, in areas of heavy Spanish-speaking population, including the Southwestern States and Chicago, Detroit, and New York, as well as certain other major metropolitan areas.
>
> [The use of] specialized recruitment teams, to include Spanish-speaking persons, for college recruitment, particularly at colleges with heavy Spanish-speaking enrollment; and
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> [use of] availability of selective placement[241] on bilingual basis so Spanish-speaking persons may be reached for appointment to positions dealing with the Spanish surnamed population. [242]

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[241] Selective placement or certification permits Federal agencies to determine that certain jobs require specific skills, such as fluency in Spanish, and then to hire persons who have those skills. U.S. Civil Service Commission, "Selective Certification of Eligibles from Commission Registers," FPM Letter No. 332-16, May 1, 1973.

[242] White House Press Release, *supra* note 240.

SESA's Sixteen Point Program coordinator is responsible to the personnel officer,[243] rather than being responsible to the equal employment opportunity officer as suggested by the Civil Service Commission.[244] This has the effect of isolating SESA's Sixteen Point Program from the rest of its equal employment opportunity program.

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[243] Lupe Saldana, Sixteen Point Program Coordinator, SESA, Department of Commerce, "SESA: Spanish-Surnamed Program," (undated). This report was submitted to the CSC team reviewing the equal employment opportunity program at SESA.

The Bureau states that:

> The Sixteen Point Program Coordinator has historically been an active member of the Equal Employment Opportunity Committee at SESA which advises the Administrator on the overall operation of the program. This committee contributes heavily in the formulation of SESA's annual Affirmative Action Plans and in monitoring these plans throughout the year. In addition, the Sixteen Point Coordinator consults with, and is consulted by, those persons who are designated "responsible officials" for carrying out specific action items of the Affirmative Action Plan. In fact, the Sixteen Point Coordinator is specifically designated among those "responsible officials" in such undertakings as developing special recruitment literature designed to attract minority persons and for establishing and maintaining effective relationships with the appropriate community and other organizations. Bureau of the Census response, supra note 29, at 15.

[244] Civil Service Commission FPM Letter No. 713-18, supra note 239.

Further, SESA's 1973 affirmative action plan[245] does not address the need for implementing any elements of the President's Sixteen Point Program. Such omissions are violative of Civil Service Commission requirements.[246]

It is essential that SESA's affirmative action plan be responsive to the Sixteen Point Program. Unless the Bureau takes steps to employ Mexican Americans, Puerto Ricans, Cubans, and other persons of Spanish speaking background in all of its program areas, the focus of its data collection, forms design, tabulation, and publication activities likely will continue to be oriented to the non-Spanish speaking majority.

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[245] As of mid-January 1974, SESA's 1974 affirmative action plan was unavailable for public distribution. Telephone interview with Emma Moreno, community relations specialist, Field Division, Bureau of the Census, Jan. 15, 1974.

[246] CSC directs agency affirmative action plans to include action items specifically applicable to the Sixteen Point Program. Civil Service Commission FPM Letter No. 713-18, *supra* note 239.

CONCLUSIONS

The Bureau of the Census deals in numbers. It counts; it estimates; and it makes projections. Much of its work is computerized and follows carefully thought out scientific methodology. To those not familiar with the subtleties of injustice to minorities and women, the objectivity of the Bureau's efforts, at first glance, might appear to rule out the possibility of discrimination.

To the contrary, it is because the Bureau's operations are highly mechanized that it is so easy for insensitivity to persons of Spanish-speaking background to permeate its work and result in discriminatory treatment. Merely by failing to take affirmative steps in all phases of its activities, the Bureau's program has perpetuated the disregard of persons of Spanish speaking background which is characteristic of so many public institutions in this country.

The results have been disastrous. Only limited data are available on Mexican Americans, Puerto Ricans, Cubans, and other persons of Spanish speaking background and the data available are confusing and lack credibility.

The Bureau has done little to clarify the confusion which has arisen concerning the 1970 census data on persons of Spanish speaking background. It has not provided the public with detailed information on the nature of the data collected, the methods it used to collect it, and the resulting publications which are available.

The Bureau's failure to communicate with Mexican American, Puerto Rican, and other Spanish speaking background communities also is evidenced by its low receptivity to their input. The Bureau of the Census continues to believe that no one has presented it with sufficient proof of an undercount of persons of Spanish speaking background in the 1970 census.

It is noteworthy that, although the Bureau's position is firm, it is unable to produce statistics which document its posture that persons of Spanish speaking background were not undercounted in the 1970 census and maintains that it is not possible to do so. This is a rather extreme position for what is probably the most technically advanced data collection agency in the world. Given the resources available to the Bureau, it should be able to determine the rate of undercount of this significant portion of the population.

While it is clear that in the 1970 census the Bureau's efforts to enumerate persons of Spanish speaking background were greater than in any previous census, they were not well thought out and, as a result, were inadequate. Contrary to the Bureau's position, we believe that there is strong evidence that the Spanish speaking background population was undercounted substantially in that census. The documentation lies especially in the Bureau's undercount of blacks, its methodology for the collection of data, and myriad independent surveys and reports.

In the 1980 census, however, the Bureau will be in a position to provide accurate demographic, social, and economic statistics on persons of Spanish speaking background. The experience of the 1970 census has provided the background for achieving this goal.

FINDINGS

1. Current and accurate demographic, social, and economic statistics on persons of Spanish speaking background are needed by Federal agencies, State and local governments, private organizations, and individuals for a variety of purposes including the protection of voting rights, the administration of Federal and other public social programs, and the assurance of equal employment opportunity.
2. The Bureau's attention to data collection relating to persons of Spanish speaking background has come late in its history.
    a. Blacks have been enumerated since the first census in 1790.
    b. Until the 1970 census, the Bureau used no uniform measure which would enable a nationwide estimate of the total population of persons of Spanish speaking background.
3. In 1970, the Bureau made five measures of the Spanish speaking background population.
    a. Four of these, surname, language, birth or parentage, and heritage, while providing important data about that population, are correlated only indirectly with membership in that group.
    b. The fifth measure, Spanish origin self-identification, is the preferred method but was asked only of 5 percent of the United States population.

4. In determining data collection techniques for the 1970 census, the Bureau did not pay sufficient attention to the methodology necessary to obtain an accurate count of persons of Spanish speaking background.
    a. No effort was made to include persons of Spanish speaking background on advisory committees used in conjunction with the preparation of the 1970 census, and no advisory committee was convened to provide assistance on the count of Spanish speaking background persons.
    b. Mailing lists for the 1970 census were drawn up from commercial mailing lists of such persons as property tax payers and, therefore, would be unlikely to have included all households of Spanish speaking background.
    c. The Bureau made only a meager effort to hire bilingual enumerators; and, thus, there was an insufficient number used during the 1970 census.
    d. The Bureau hired an insufficient number of bilingual community education specialists.
    e. A sample bilingual or Spanish questionnaire was not mailed to individuals in all areas of high Spanish speaking concentration.

5. The census data on persons of Spanish origin were not released until almost 2 years after data on the total and the black population were released by the Bureau.
6. Press releases announcing the 1970 Spanish speaking background population totals were confusing, failing to make clear the Bureau's esoteric usage of such terms as "birth and parentage," "Spanish language," "Spanish heritage," and "Spanish origin."
7. Evidence that the data finally published undercounts the Spanish speaking background population comes from a variety of sources including independent studies, the Bureau's undercount of the black population, and informed opinions held by some demographers.

    a. The Bureau of the Census, itself, has not made an estimate of the undercount of persons of Spanish speaking background, even in selected jurisdictions with high concentrations of members of that group.
    b. The Bureau states that the necessary data for estimating the undercount, including vital statistics and immigration/emigration data, are unavailable; but it has not used its influence as the major Federal data collection agency to ensure that such data will be gathered in the future.
    c. The Bureau has not made use of the myriad data available on a local basis for estimating the approximate size of the undercount.

8. Although the Bureau is beginning to take steps to make its procedures more sensitive to persons of Spanish speaking background, its employment practices evidence an underutilization of persons of Spanish speaking background; and this impedes its efforts to ensure that its programs are attentive to the needs of this group.
    a. The affirmative action plan of SESA -- 83 percent of SESA's employees work for the Bureau of the Census--totally disregards the President's Sixteen Point Program as it flagrantly disregards the Civil Service Commission's directive to include action items specifically applicable to that program.
    b. SESA's affirmative action plan contains no goals and timetables for the remedy of this underutilization.
    c. Despite encouragement from the Civil Service Commission, SESA has not made sufficient use of selective certification procedures in order to hire the bilingual staff necessary for communication with the minority community.

RECOMMENDATIONS

1. The Bureau should familiarize itself with Federal, State, and local government and private needs for demographic, social, and economic statistics on persons of Spanish speaking background.

    a. The Bureau should ensure that persons of Spanish speaking background are represented on all advisory committees.

    b. The Bureau should establish an advisory committee composed of representatives of a wide variety of Spanish speaking organizations with an interest in using census data.

    c. The Bureau should request the assistance of OMB in obtaining information about the need for Spanish speaking background statistics.

2. The Bureau should take steps to ensure that all aspects of its program, including questionnaire design and data collection, tabulation, and publication, are responsive to the needs of the Spanish speaking background population.

3. The Bureau should include the "Spanish origin" question on all questionnaires in the 1980 census.

a. The question should be asked for each member of the household.

b. Separate identification should be made of Mexican Americans, Puerto Ricans, Cubans, Central and South Americans, and other persons of Spanish speaking background.

c. The Bureau should continue to collect data on birth or parentage, surname, and language as characteristics of this population group.

4. The Bureau of the Census should conduct a study to determine the best procedures to ensure total coverage of the Spanish speaking background population in the 1980 census.

a. It should review its procedures for obtaining lists of addresses and use conventional enumeration, if necessary, to ensure coverage of housing units which may not have been listed on address registers.

b. The Bureau should make a special effort to hire bilingual enumerators for the 1980 census and use them for followup and for door-to-door enumeration in areas in which address lists are not complete.

c. The Bureau should increase its community education program for the 1980 census, ensuring that the program reaches every city of 10,000 or more persons, 5 percent or more of whom are of Spanish speaking background.

d. In addition to the English questionnaire, a bilingual or Spanish questionnaire should automatically be forwarded to every household in census tracts in which 5 percent or more of the population is of Spanish speaking background.

e. The Bureau should conduct a field study in cities such as Bridgeport, Connecticut, and San Antonio, Texas, to perfect its techniques for reaching the Spanish speaking background population.

5. Data on persons of Spanish speaking background collected in the 1980 census should be released simultaneously with the population totals by race.

6. All releases of Spanish origin data should specifically identify what the data are and how they may appropriately be used, clarifying such terms as "birth or parentage," "Spanish language," "heritage," and "origin."

7. The Bureau immediately should begin to develop techniques for measuring a census undercount of persons of Spanish speaking background.

   a. It should make known its needs for independent data on Puerto Ricans, Mexican Americans, Cubans, and other persons of Spanish speaking background to the Office of Management and Budget; the Department of Health, Education, and Welfare; and other Federal agencies with statistical responsibilities.
   b. It should attempt to estimate the undercount in the 1970 census in selected cities.

8. The Bureau should increase significantly its employment of persons of Spanish speaking background in each of its units of operation.

   a. It should conduct an analysis of the underrepresentation of persons of Spanish speaking background in each of its units of operation.

   b. It should revise the SESA affirmative action plan to include meaningful action items to increase the employment of persons of Spanish speaking background.

   c. It should set goals and timetables for increasing its employment of persons of Spanish speaking background with special attention given to policymaking positions.

   d. The Bureau should hire bilingual staff for positions which require communication with the Spanish speaking community.

APPENDIX

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